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530 N.W.2d 497
209 Mich.App. 217
PEOPLE of The State of Michigan, Plaintiff-Appellee,
v.
David Neal HAYWOOD, Defendant-Appellant.
No. 128442.
Court of Appeals of Michigan.
Submitted Sept. 7, 1994, at Grand Rapids.
Decided March 6, 1995, at 9:45 a.m.
Released for Publication April 17, 1995.

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John Sahli, Calhoun County Prosecutor, for the people.

[209 Mich.App. 218] State Appellate Defender by Ronald E. Steinberg, for defendant on appeal.

Before MacKENZIE, P.J., and RICHARD ALLEN GRIFFIN and TALBOT, * JJ.

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RICHARD ALLEN GRIFFIN, Judge.

Following a lengthy jury trial, defendant was convicted of one count of second-degree murder, M.C.L. § 750.317; M.S.A. § 28.549, and was sentenced[209 Mich.App. 219] to forty to sixty years' imprisonment. Defendant now appeals as of right. We affirm and hold, inter alia, that the trial courts may take judicial notice of the general acceptance of bloodstain interpretation evidence by the scientific community.

I

This case arises out of the beating death of defendant's girl friend. The victim's death occurred sometime in the early morning hours of June 19, 1989, in the apartment she shared with defendant. The police found the bloodied victim lying in a bathtub. An autopsy revealed that the victim had suffered multiple traumatic injuries consistent with a severe beating. The victim's internal injuries included a subdural hemorrhage surrounding the brain, five broken ribs, a perforation of the small intestine, and a large perforation of the rectum. The victim's primary cause of death was the loss of blood from the perforation of her rectum. The victim's injuries were consistent with being beaten with a bloody brush and broom handle found in the apartment.

At trial, the victim and defendant's downstairs neighbor, Norval Ingram, testified that he was home during the time of the victim's death. At approximately 12:35 a.m., he began to hear "unusual" noises in the upstairs apartment. Ingram was awakened by the sound of a heavy object hitting the floor. Following that noise, he heard the sound of running water and observed "dirty water" coming through his ceiling. Ingram then heard a "thud" and a "crashing" noise upstairs. The noise continued intermittently.

A short time later, Ingram went upstairs and knocked on defendant's apartment door. He heard [209 Mich.App. 220] a woman's voice ask if there "was someone at the door." The woman then called out defendant's name and stated that someone was at the door. From behind the apartment door, Ingram heard a man's voice he recognized as defendant's ask him "what [he] want[ed]." In response to Ingram's inquiry concerning the running water, the man told him to "take it up with the landlord." Ingram left and went downstairs to his apartment. Ingram continued to hear loud noises in the upstairs apartment until sometime between 3:00 a.m. and 5:00 a.m.

Detective Michael Van Stratton testified that he was dispatched to the victim and defendant's apartment at approximately 1:40 p.m. on June 19, 1989. While at the apartment, he observed bloodstains throughout the apartment. Over defendant's objection, Detective Van Stratton testified regarding his analysis of the bloodstains after being qualified as an expert witness in the field of bloodstain interpretation. On the basis of his analysis of the bloodstains, Van Stratton opined that the victim was beaten in several different locations, including the bedroom. Further, he concluded that someone had attempted to wipe up the blood in the apartment.

The prosecutor offered Detective Van Stratton's testimony to contradict defendant's original statement to the police. Defendant had stated that he had gone to sleep in the bedroom earlier in the evening after the victim had left for the evening. He told the police that he was awakened later that night when the victim returned. He stated that he did not discover the victim's injuries until he went into the bathroom and found her in the bathtub early the next morning. In his statement, he also denied attempting to wipe up the blood in the apartment.

[209 Mich.App. 221] II

On appeal, defendant raises a number of challenges regarding the admission of the bloodstain interpretation evidence presented by Detective Van Stratton. Defendant primarily argues that the prosecutor failed to sustain his burden of proving that bloodstain interpretation evidence has gained general acceptance by disinterested experts in the scientific community.

The Davis- Frye rule, adopted from People v. Davis, 343 Mich. 348, 72 N.W.2d 269 (1955), and Frye v. United States, 54

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U.S.App.D.C. 46, 47, 293 F. 1013 (1923), 1 limits the admissibility of novel scientific evidence by requiring the party offering the evidence to demonstrate that it has gained general acceptance in the scientific community. People v. Young (After Remand), 425 Mich. 470, 473, 391 N.W.2d 270 (1986); People v. Adams, 195 Mich.App. 267, 269, 489 N.W.2d 192 (1992); People v. Gistover, 189 Mich.App. 44, 46, 472 N.W.2d 27 (1991). General scientific recognition may not be established without the testimony of disinterested and impartial experts whose livelihood is not intimately connected with the new technique. Young, supra at 479-480, 391 N.W.2d 270; People v. Tobey, 401 Mich. 141, 145, 257 N.W.2d 537 (1977); People v. Barbara, 400 Mich. 352, 358, 376, 255 N.W.2d 171 (1977). The Davis- Frye test is applied only to novel scientific techniques or principles. "A party need not show the general acceptance of an already established test." People [209 Mich.App. 222] v. Davis, 199 Mich.App. 502, 512, 503 N.W.2d 457 (1993). See also People v. Marsh, 177 Mich.App. 161, 164, 167, 441 N.W.2d 33 (1989).

The admissibility of expert testimony concerning the interpretation of "blood spatters" or "bloodstains" is an issue of first impression in Michigan. In Farris v. State, 670 P.2d 995, 997 (Okla.App.1983), the Oklahoma Court of Criminal Appeals described this evidence as follows:

The geometric Blood Stain Interpretation is a method used to reconstruct the scene of the crime. Blood stains are uniform in character and conform to the laws of inertia, contrifugal [sic] force and physics. Study of the blood pattern along with its size and shape helps determine the source of the blood and any movement that might have occurred after the bloodshed began, including subsequent violent attacks upon the victim.

Because bloodstain interpretation evidence is based upon generally accepted principles in the scientific community, a number of jurisdictions have upheld the admission of the testimony without the need for a Davis-Frye-type hearing. In People v. Clark, 5 Cal.4th 950, 1018, 22 Cal.Rptr.2d 689, 857 P.2d 1099 (1993), cert. den. --- U.S. ----, 114 S.Ct. 2783, 129 L.Ed.2d 894 (1994), the California Supreme Court held that bloodstain interpretation testimony was admissible without proof that the evidence was generally accepted in the scientific community:

The testimony at issue here raises none of the concerns addressed by Kelly/ Frye. "The methods employed are not new to [science] or the law, and they carry no misleading aura of scientific infallibility." (People v. Stoll [49 Cal.3d 1136, 1157, 265 Cal.Rptr. 111, 783 P.2d 698 (1989)] [psychological profile testimony], emphasis in the original.) In [209 Mich.App. 223] fact, the admissibility of "blood-spatter" or "blood dynamics" testimony in this state predates our [People v. Kelly, 17 Cal.3d 24, 130 Cal.Rptr. 144, 549 P.2d 1240 (1976)] decision. (People v. Carter, [48 Cal.2d 737, 750-751, 312 P.2d 665 (1957)].) Moreover, neither the experiments conducted in connection with such analysis nor the principles underlying it produce an "aura of scientific infallibility." Rather, it is a matter of common knowledge, readily understood by the jury, that blood will be expelled from the human body if it is hit with sufficient force and that inferences can be drawn from the manner in which the expelled blood lands upon other objects. The Kelly/ frye rule is inapplicable.

Additionally, other jurisdictions have upheld the admission of bloodstain interpretation evidence by taking judicial notice of its reliability. In Lewis v. State, 737 S.W.2d 857, 860-861 (Tex.App.1987), the Texas Court of Appeals held that bloodstain interpretation testimony offered by a criminologist was admissible, partly on the basis of decisions of other jurisdictions:

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Appellant complains that bloodstain analysis has never been offered in a Texas criminal trial, and observes that, at trial, the State failed to cite any cases approving the technique in other jurisdictions. Judicial recognition of a given technique is a factor in determining general acceptance. Jones, [v. State, 716 S.W.2d 142, 147 (Tex.App.1986).]

This Court may take judicial notice on its own motion of the judicial decisions of other states. Tex.R.Crim.Evid. 202. Bloodstain analysis is considered a proper subject of expert testimony in several states. State v. Melson, 638 S.W.2d 342 (Tenn., 1982), cert. denied 459 U.S. 1137, 103 S.Ct. 770, 74 L.Ed.2d 983 (1983); State v. Hilton, 431 A.2d 1296 (Me., 1981); People v. Erickson, 89 Ill.App.3d 56; 44 Ill.Dec. 138; 411 N.E.2d 44 (1980); People v. Carter, 48 [209 Mich.App. 224] Cal.2d 737, 312 P.2d 665 (1957). Such testimony was also admitted in a

recent Texas trial, although it is unapparent whether the evidence was challenged. Guerrero v State, 720 SW2d 233, 234 (Tex App--Austin 1986, pet. ref'd).

MacDonnell testified that he was aware of "many" other individuals who study in his field. Appellant notes that these other individuals were not named, and suggests that MacDonnell should not have been allowed to establish the general acceptance of his methods by his testimony alone. This rule might be valid in cases where the challenged technique uses untested methods, or where the reliability of the technique is seriously questioned, as is the case with lie detectors or "truth serum." However, MacDonnell's studies are based on general principles of physics, chemistry, biology, and mathematics, and his methods use tools as widely recognized as the microscope; his techniques are neither untested nor unreliable. We hold that MacDonnell's testimony was properly admitted.

We find these cases to be persuasive. In our view, the scientific principles underlying the interpretation of bloodstains are neither novel nor untested. Rather, this evidence is based upon established principles of physics, biology, chemistry, and mathematics. Given the overall recognition of this technique in other jurisdictions, 2 we hold that the trial courts may take judicial notice of the general acceptance of such evidence by the scientific community. Accordingly, we conclude that the trial court did not abuse its discretion in admitting Detective Van Stratton's testimony at trial.

To the extent that defendant challenges Detective Van Stratton's qualifications as an expert witness, this argument is without merit. An individual[209 Mich.App. 225] must be qualified by "knowledge, skill, experience, training, or education" to testify as an expert witness. MRE 702. In exercising its discretion, a trial court should not require a proposed expert witness to satisfy an overly narrow test of qualifications. People v. Whitfield, 425 Mich. 116, 122-124, 388 N.W.2d 206 (1986); People v. Moye, 194 Mich.App. 373, 378, 487 N.W.2d 777 (1992), rev'd on other grounds 441 Mich. 864, 491 N.W.2d 232 (1992).

In this case, Detective Van Stratton was clearly qualified by knowledge, experience, and training to testify regarding the bloodstains found in defendant's apartment. He had received over one hundred hours of training in bloodstain analysis and attended five different seminars. Further, he had utilized that training in approximately one hundred previous cases. Finally, Van Stratton indicated that he was familiar with the literature on the subject and teaches a course on bloodstain interpretation to other law enforcement officers. The trial court did not abuse its discretion in allowing Detective Van Stratton to testify as an expert witness at trial.

III

Defendant also argues that his statement to police was constitutionally infirm and should have been suppressed on a number of grounds. Defendant alleges that his statement

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was involuntary under the totality of the circumstances on the basis of his failure to waive his Miranda 3 rights, the deliberate delay of his arraignment, and his severe hangover. We disagree.

When reviewing a trial court's determination of the voluntariness of a statement, we examine the [209 Mich.App. 226] entire record and make an independent determination. People v. Marshall, 204 Mich.App. 584, 587, 517 N.W.2d 554 (1994); People v. Brannon, 194 Mich.App. 121, 131, 486 N.W.2d 83 (1992). Nevertheless, the trial court's findings will not be reversed unless they are clearly erroneous. Marshall, supra; People v. Seymour, 188 Mich.App. 480, 482-483, 470 N.W.2d 428 (1991). In evaluating the admissibility of a statement, we review the totality of the circumstances surrounding the making of the statement to determine whether it was freely and voluntarily made in light of the factors stated by our Supreme Court in People v. Cipriano, 431 Mich. 315, 334, 429 N.W.2d 781 (1988):

[T]he age of the accused; his lack of education or his intelligence level; the extent of his previous experience with the police; the repeated and prolonged nature of the questioning; the length of the detention of the accused before he gave the statement in question; the lack of any advice to the accused of his constitutional rights; whether there was an unnecessary delay in bringing him before a magistrate before he gave the confession; whether the accused was injured, intoxicated or drugged, or in ill health when he gave the statement; whether the accused was deprived of food, sleep, or medical attention; whether the accused was physically abused; and whether the suspect was threatened with abuse.

In the present case, our independent review of the record reveals that defendant's statements to the police were freely and voluntarily made in light of the factors in Cipriano. Defendant's videotaped interview with the investigating officer contradicts his assertion that he failed to waive his Miranda rights. Before his interview, defendant was given his Miranda warnings. He never requested to speak to counsel or refused to speak [209 Mich.App. 227] with the investigating officer during his interview. Further, he signed a form waiving his Miranda rights. Similarly, defendant's assertion that the police deliberately delayed his arraignment in order to extract a statement from him is equally without merit. The police were precluded from questioning defendant following his

arrest on June 19, 1989, because of his extreme inebriation. Finally, we find unpersuasive defendant's argument that his statements were coerced because of his severe hangover. Defendant readily responded to the investigating officer's questions during the interview.

IV

Next, we consider defendant's claim that he was denied a fair trial because of the testimony of the victim's father that she had a "black eye" when she resided with defendant in 1988. Specifically, defendant asserts that the trial court erred in failing to blunt the prejudicial effect of this testimony by granting defendant's motion for a mistrial or by giving a cautionary instruction to the jury.

Defendant's claimed error occurred during the testimony of the victim's father as he was being questioned by the prosecutor. During the prosecutor's questioning concerning the parties' past relationship, the following colloquy occurred:

Q. Did she continue to live with him after that first visit to you [sic] knowledge?
A. For awhile, but she moved off with someone else.
Q. All right.
A. I understand that at the time we visited her she had a black eye ...

[209 Mich.App. 228] Following the witness' comments, the trial court overruled defendant's motion for a mistrial, stating:

The motion is denied. The question was not specifically designed to elicit that answer. Mr. Purdy is not a policeman, he is not held to the same standards in terms of injecting material into this trial. And there is no basis for mistrial and the motion is denied.

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The trial court's grant or denial of a mistrial will not be reversed on appeal in the absence of an abuse of discretion. People v. McAlister, 203 Mich.App. 495, 503, 513 N.W.2d 431 (1994); People v. Vettese, 195 Mich.App. 235, 245-246, 489 N.W.2d 514 (1992). A mistrial should be granted only for an irregularity that is prejudicial to the rights of the defendant, People v. Siler, 171 Mich.App. 246, 256, 429 N.W.2d 865 (1988), and impairs his ability to get a fair trial, People v. Barker, 161 Mich.App. 296, 305, 409 N.W.2d 813 (1987). Nevertheless, an unresponsive, volunteered answer to a proper question is not grounds for the granting of a mistrial. People v. Gonzales, 193 Mich.App. 263, 266-267, 483 N.W.2d 458 (1992); People v. Lumsden, 168 Mich.App. 286, 299, 423 N.W.2d 645 (1988); People v. McKeever, 123 Mich.App. 533, 538, 332 N.W.2d 596 (1983).

In this case, the improper comments by the victim's father were not grounds for a mistrial because they were not elicited by the prosecutor's questioning. Instead, the comments were volunteered and were unresponsive answers to proper questions. We agree with the lower court that, unlike the other prosecution witnesses, this witness was not in a position to know that his testimony was improper. Further, we note that the prejudicial effect of the witness' statement was [209 Mich.App. 229] lessened because he did not refer to defendant as the cause of the victim's injury. Finally, despite defendant's claim that the trial court erred in failing to give the jurors a cautionary instruction, he failed to request such an instruction. Accordingly, we conclude that defendant was not denied a fair trial.

V

Defendant further argues that the trial court erred in denying his motion for a directed verdict with respect to the first-degree premeditated murder charge because there was insufficient evidence regarding premeditation and deliberation. Defendant claims that the erroneous consideration of the improper charge forced the jury to reach a compromise verdict. We disagree.

To establish first-degree premeditated murder, the prosecution must prove that the defendant intentionally killed the victim and the act of killing was deliberate and premeditated. M.C.L. § 750.316; M.S.A. § 28.548; People v. Wofford, 196 Mich.App. 275, 278, 492 N.W.2d 747 (1992); People v. Saunders, 189 Mich.App. 494, 496, 473 N.W.2d 755 (1991). The elements of premeditation and deliberation may be inferred from all the facts and circumstances surrounding the incident, People v. Berry (On Remand), 198 Mich.App. 123, 128, 497 N.W.2d 202 (1993); People v. Gonzalez, 178 Mich.App. 526, 532-533, 444 N.W.2d 228 (1989), including the parties' prior relationship, the actions of the accused both before and after the crime, and the circumstances of the killing itself, People v. Coddington, 188 Mich.App. 584, 600, 470 N.W.2d 478 (1991); People v. Jackson, 171 Mich.App. 191, 199-200, 429 N.W.2d 849 (1988).

Viewed in a light most favorable to the prosecution,[209 Mich.App. 230] we conclude that there was sufficient evidence to justify the submission of the first-degree murder charge to the jury. That the killing was deliberate and premeditated can be inferred from the number of weapons used by defendant and the length of time of the victim's beating. The victim's death was not instantaneous. Testimony revealed that the victim died from a severe beating of

her entire body that occurred over several hours. Additionally, the evidence establishes that two separate weapons, a brush and a broom handle, were used to beat the victim, giving defendant the time to take a second look and reconsider his decision. Finally, evidence of defendant's attempt to clean up the blood after the killing could be used to infer that he acted with deliberation and premeditation. Under these circumstances, we conclude that the trial court did not abuse its discretion in denying defendant's motion for a directed verdict.

VI

Defendant next contends that the trial court erred in failing to instruct the jury that the prosecution had the burden of proving beyond a reasonable doubt the absence of heat of passion. Defendant argues that this error denied him his due process right not to be convicted unless the prosecution has proven

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all the elements of the crime beyond a reasonable doubt. However, defendant did not object or request that such an instruction be given. Therefore, our review is limited to the issue whether relief is necessary to avoid manifest injustice to defendant. People v. Van Dorsten, 441 Mich. 540, 544-545, 494 N.W.2d 737 (1993); People v. Hoffman, 205 Mich.App. 1, 22, 518 N.W.2d 817 (1994). After thorough review of the record, we find no manifest injustice.

[209 Mich.App. 231] At trial, the focus of the defense strategy was on defendant's alibi rather than his mental state at the time of the killing. No evidence was presented regarding heat of passion by defendant. Furthermore, the prosecution argued that defendant was guilty of first-degree premeditated murder rather than voluntary manslaughter. Given the defense posture of the case, we conclude that any alleged failure by the trial court to instruct the jury with regard to the prosecutor's burden regarding heat of passion did not deny defendant a fair trial.

VII

Finally, defendant raises several challenges to the validity of his sentence. Defendant first argues that the trial court, in imposing sentence, improperly considered prior misdemeanor convictions that were obtained when the defendant was not represented by counsel. A defendant who collaterally challenges a prior conviction for lack of counsel or a proper waiver of counsel under Gideon v. Wainwright, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963), bears the initial burden of proof. People v. Carpentier, 446 Mich. 19, 31, 521 N.W.2d 195 (1994); People v. Moore, 391 Mich. 426, 216 N.W.2d 770 (1974).

In order to satisfy this burden, a defendant "must present prima facie proof that a prior conviction violated Gideon, or present evidence that the sentencing court either 'failed to reply' to a request for or 'refused to furnish' requested copies of records and documents." Carpentier, supra at 32, 521 N.W.2d 195, citing Moore, supra. The burden shifts to the prosecutor to establish the constitutional validity of the prior conviction once the defendant has satisfied his initial burden of proof. Carpentier, supra at 31, 521 N.W.2d 195.

[209 Mich.App. 232] At sentencing, defendant relied on the presentence investigation report (PSIR) to support his argument that ten of his prior misdemeanor convictions were constitutionally infirm. The PSIR indicated that defendant had validly waived counsel in all of the contested convictions. Nevertheless, defendant argues that his convictions were obtained without a proper waiver of counsel and that he presented prima facie proof under Moore. Defendant now claims that he is entitled to resentencing because the prosecution did not carry its burden of establishing the constitutional validity of his prior convictions.

Even if we were to agree with defendant's position, a defendant is only entitled to resentencing when a trial court relies on the invalid conviction in imposing sentence. See, e.g., Moore, supra at 439-440, 216 N.W.2d 770; People v. Leary (On Remand), 198 Mich.App. 282, 286-287, 497 N.W.2d 922 (1993); People v. Ristich, 169 Mich.App. 754, 756, 426 N.W.2d 801 (1988). From our review of the record, it is clear that the trial court did not enhance defendant's sentence on the basis of the contested convictions:

Now Mr. Schaeffer is correct the jury has spoken, and I must deal with their verdict. And when I consider the nature of the crime, the prior record, and the guidelines, even if accepting Mr. Schaeffer's analysis that there should not be 10 points given in prior record variable 5, I do believe that the recommendation is appropriate, Mr. Haywood. And, therefore, it is the sentence of the court that you spend a term of not less than 40 years nor more than 60 years with credit for 314 days served. If, as I believe, there were valid waivers, the sentence is within the guidelines. If they were not, I do believe that the protection of society requires the sentence as given.

[209 Mich.App. 233] We also find unpersuasive defendant's argument that his sentence violates the principle of proportionality. Defendant contends that had the trial court not considered the challenged prior convictions, the sentencing guidelines would have recommended a minimum sentence of fifteen to thirty years or life. Therefore, defendant claims that the trial court did not adequately justify the extent of its departure from the upper end of the recommended range.

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A sentencing court is free to depart from the guidelines' recommended range when it is disproportionate to the circumstances of the offense and offender. People v. Merriweather, 447 Mich. 799, 527 N.W.2d 460 (1994); People v. Milbourn, 435 Mich. 630, 461 N.W.2d 1 (1990); People v. Brzezinski (After Remand), 196 Mich.App. 253, 254-255, 492 N.W.2d 781 (1992). After reviewing the record in the present case, we conclude that the trial court adequately justified a departure from the guidelines. At sentencing, the trial court indicated that defendant's forty-year minimum sentence was appropriate given the nature of the crime and defendant's prior record. Our review of the record supports the trial court's conclusion. The victim died from a severe beating. Despite the infliction of multiple traumatic injuries, defendant continued for a prolonged period to savagely pummel the victim. The crime committed was extraordinarily brutal and malicious. Moreover, defendant's criminal record includes five prior felony convictions in addition to the contested misdemeanor convictions. After consideration of the offense and the offender, we conclude that the trial court did not abuse its discretion in imposing defendant's sentence.

Affirmed.

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* Michael J. Talbot, 3rd Judicial Circuit Judge, sitting on Court of Appeals by assignment pursuant to Const.1963, Art. 6, Sec. 23, as amended 1968.

1 We recognize that in Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. ----, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1993), the United States Supreme Court held the Frye test was superseded by the adoption of FRE 702. In light of our narrow resolution of this issue, we need not address the continued applicability of the Davis- Frye test under Michigan jurisprudence. Nevertheless, we note that MRE 702, unlike its federal counterpart, incorporates a "recognized" standard for the admissibility of scientific evidence. See People v. Hubbard, 209 Mich.App. 234, 530 N.W.2d 130 (1995).

2 See anno: Admissibility, in criminal prosecution, of expert opinion evidence as to "blood spatter" interpretation, 9 ALR5th 369.

3 Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).