Journal of Criminal Law and Criminology

Volume 36 | Issue 3 Article 10

1945

American Journal of Police Science: Legal Abstracts and Notes

LEGAL ABSTRACTS AND NOTES

THE UNITED STATES SUPREME COURT INTERPRETATION OF ADMISSIBILITY OF CRIMINAL CONFESSIONS*

THE rule of evidence prohibiting the admission in criminal cases of evidence elicited from the accused by coercion or undue influence is well settled.[1] However, decisions of the United States Supreme Court during the past few years show a decided trend towards a new and broader interpretation of the factors constituting coercion and undue influence.

The recent trend in the attitude of the Court regarding confessions is bottomed upon a series of cases decided between 1936 and 1942 involving convictions in several southern states of negroes accused of rape or murder of white victims. In each instance the Court very properly decided that the police tactics employed in obtaining the confessions, and the court use of the confessions based thereon, constituted a violation of the due process clause of the Fourteenth Amendment to the Federal Constitution. The first of these cases, *Brown v. Mississippi*,[2] involved actual physical abuse of the defendants who, while under suspicion of murder, were severely beaten by the police immediately before confessing. The confessions thus obtained constituted the sole evidence against them. In the next case, *Chambers v. Florida*,[3] the defendants were not physically abused as in the *Brown* case but were intensively questioned as murder suspects for a week. The culmination point was an all night session of continuous interrogation, and the taking of several written confessions until one was obtained from the defendants which was considered "worth while" by the county prosecutor. The Supreme Court reversed the case on the ground that the use of confessions thus obtained constituted a violation of due process of law. For similar reasons, and upon somewhat analogous facts, the Supreme Court reversed the state convictions in the cases of *White v. Texas*[4] and *Ward v. Texas*[5].

In the foregoing cases the Supreme Court applied the conventional and accepted test inquiring into the voluntary nature or the trust-

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[1] For an analysis of this field generally, see Wigmore, Evidence (3rd ed., 1940) § § 815-867; Wharton, Criminal Evidence (11th ed., 1935) § 591 *et seq.*

[2] 297 U. S. 278 (1936).

[3] 309 U. S. 227 (1940).

[4] 310 U. S. 530 (1940). A farm hand accused of rape was held in custody for a week. On several nights he was taken from the jail out into the woods for questioning, and on the last night interrogated in a locked elevator in the jail house. The Court held that the circumstances were such that the confession could not be considered as trustworthy.

[5] 316 U. S. 547 (1942). The Court reversed a murder conviction resting on a confession made by the accused after he had been arrested without a warrant, moved from county to county for two days on the pretense of avoiding mob violence, and questioned continuously. The Court held that although each state has the right to prescribe the tests governing the admissibility of confessions, yet when the federal question of due process has been raised the Supreme Court cannot be precluded by the verdict of the jury from determining whether the circumstances under which the confession was made were such that its admission in evidence would amount to a denial of due process.

worthiness of the confessions.[6] The wisdom of these decisions cannot be questioned. Such practice on the part of police officers cannot be condoned and confessions thus obtained can neither be regarded as voluntary nor trustworthy. However, in 1944 the Supreme Court went further than it had in any previous decisions and indicated a decided tendency towards more severe restrictions upon law enforcement officers. In the case of *Ashcraft v. Tennessee*[7] the Court laid down a test of admissibility based upon whether or not the conditions and circumstances surrounding the making of the confession were "inherently coercive." In applying that test the court held inadmissible a confession obtained from the defendant after he had been held incommunicado for thirty-six hours without rest or sleep.

Justice Jackson wrote a strong dissenting opinion in the *Ashcraft* case[8] in which he pointed out that arrest itself, as well as custody and examination even for one hour, is "inherently coercive"; that, of course such acts put pressure upon the prisoner to answer questions, to answer them truthfully, and to confess if guilty. Thus he felt that the "inherently coercive" doctrine, as established by the majority opinion, was too strict and in direct conflict with the previously accepted rule that a confession is admissible if not obtained by acts or threats of violence or promises of benefits so as to render the confession untrustworthy.

Unfortunately Justice Jackson's arguments seem to have had little effect upon the majority of the Court, for in the case of *Lyons v. Oklahoma*,[9] decided soon thereafter, the Court held that if a confession which is found to have been illegally obtained is introduced at the trial, the judgment of conviction will be set aside even though the evidence apart from the confession might have been sufficient to sustain the jury's verdict.[10]

The Supreme Court had thus departed from the generally accepted test of admissibility when the recent case of *Malinski et al v. New York*[11] arose. The defendant was arrested as a suspect for the murder of a police officer during a robbery. He was taken to a hotel and questioned by the police for a period of four days. His

[6] The usually accepted tests of admissibility is voluntariness, which is determined in a preliminary hearing by the trial judge out of the presence of the jury, and in some states if the confession is admitted, the defendant may present evidence concerning the alleged coercion for the jury to consider in determining the credibility of the confession. People v. Fox, 319 Ill. 606, 150 N.E. 347 (1926). Other states have held that the question of voluntariness is for the jury under proper instructions. People v. Doran, 246 N. Y. 409, 159 N.E. 379 (1927). See note 85 A.L.R. 870 (1933) and extensive article on "The Scope of Privilege", McCormick (1938) 16 Tex. L. Rev. 447, 451, *et seq.* However, as Dean Wigmore points out the test of voluntariness seems to be too indefinite. The better test would seem to be "Was the situation one likely to lead to an untrue confession?" Such a test seems to be sufficient to protect the innocent person from false prosecution and yet to give the police sufficient leeway so that the guilty may be brought to justice. Wigmore, Evidence (3rd ed., 1940) § § 823-827; 2266.

[7] 322 U. S. 143 (1944). Note (1944) 57 Harv. L. Rev. 919.

[8] 322 U. S. 143, 156 (1944).

[9] 322 U. S. 596 (1944).

[10] The court, however, affirmed the conviction on the fact situation. The accused made an involuntary, coerced confession followed twelve hours later by the confession in question which was made in the presence of other officers whom he had no occasion to fear.

[11] —— U. S. ——, 65 S. Ct. 781 (1945). See notes (1944) 20 N. Y. U.L.Q.R. 236; (1945) 45 Col. L. Rev. 660.

clothes were taken away for a few hours during the first day; however, there was nothing to show that he was beaten or threatened while he was being held at the hotel. During the first day he made an oral confession, and on the fourth day, upon being taken to the police station, he was arraigned after signing a written confession. At the trial the written confession, as well as his own admissions of guilt to several other witnesses, was introduced in evidence. Although references were made to the oral confession by a witness and the prosecuting attorney, there was no attempt made to introduce it as evidence. The trial judge instructed the jury to consider the written confession only if they found beyond a reasonable doubt that it was voluntary, and that although the delay in arraignment was not conclusive, they might consider it in passing on the question of voluntariness.[12] The defendant was convicted of first degree murder and the conviction was affirmed by the New York Court of Appeals.[13] The United States Supreme Court, in a five to four decision, did not consider the written confession but reversed the conviction on the grounds that the oral confession was involuntary and coerced and had been submitted to the jury in violation of the due process clause of the Fourteenth Amendment.[14] As pointed out by the dissent,[15] the Court for the first time set aside the finding of the trial jury and reweighed the conflicting evidence as to the alleged coercion. The effect of this decision would seem to shackle the methods and practices which may be employed by state law enforcement officers.

Restrictions which appear to be even more stringent than those applied in state cases have been adopted by the Supreme Court in considering criminal convictions in federal courts. Two cases, *McNabb v. United States*[16] and *Anderson v. United States*,[17] both decided in 1943 indicate that in federal cases the Supreme Court will not be bound to a consideration of the due process question alone. In the *McNabb* case the defendants were arrested by officers of the Bureau of Internal Revenue on suspicion of having murdered an officer of that agency, but were not immediately taken before a committing magistrate as required by federal statute. They were held incommunicado for several days and questioned intermittently. Their convictions based upon their confessions obtained as a result of the questioning were reversed by the Supreme Court which held inadmissible the confessions made by the accused while in illegal custody even though the confessions themselves were not considered involuntary, untrustworthy, or even "inherently coercive." Justice Frankfurter, representing the majority of the court, reasoned that in federal cases the reviewing power of the Court is not confined to constitutionality, but rather that judicial supervision of the administration of criminal justice in the federal courts implies the duty of establishing and maintaining "civilized standards of procedure and evidence". In the *Anderson* case the defendants were illegally arrested by state officers on suspicion of having conspired to dynamite government property. After being questioned by both state

[12] See People v. Alex, 265 N. Y. 192, 192 N.E. 289 (1934).

[13] *Conviction affirmed*, 292 N. Y. 360, 55 N.E. (2d) 353 (1944), *remittitur amended*, 292 N. Y. 686, 56 N.E. (2d) 106 (1944), *rehearing denied*, 293 N. Y. 695, 56 N.E. (2d) 303 (1944).

[14] *For reversal*: Justices Douglas, Black, Frankfurter, Rutledge, Murphy; *dissent*: Chief Justice Stone, Justices Roberts, Reed, Jackson.

[15] —— U. S. ——. 65 S. Ct. 781, 790 (1945).

[16] 318 U. S. 332 (1943). Note (1943) 56 Harv. L. Rev. 1008.

[17] 318 U. S. 350 (1943).

and federal officers they confessed and were then arraigned. The Supreme Court held that although the conduct of the federal officers was not illegal, their collaboration with the state officers tainted the evidence and rendered the confession inadmissible under the principles announced in the *McNabb* case.

There was a decided reaction among members of the Bar against the *McNabb* decision. At a meeting of the American Bar Association in 1943 to consider a preliminary draft of federal rules of criminal procedure[18] there was overwhelming opposition expressed against including in the rules a section embodying the effect of the *McNabb* decision, and the section was omitted from the final draft. Similar disapproval was expressed by the Arkansas Supreme Court which refused to apply in state proceedings the rule which was announced in the *McNabb* decision for federal cases. The Arkansas court said ". . . we think the better rule to follow is . . . to make the test of admissibility of a confession depend not upon when it was made but upon whether it was voluntarily made . . ."[19] Likewise, a Federal Circuit Court of Appeals,[20] bound by the rule of the *McNabb* case, used the following language in reversing a treason conviction: "With all due deference to the Supreme Court, and especially to Mr. Justice Frankfurter, the author of those opinions, we are constrained to state that we entertain grave doubts that this recently promulgated rule of evidence will result in any improvement to the administration of criminal justice."[21]

Perhaps as a result of this widespread disapproval, the extreme decision in the *McNabb* case has been somewhat modified by *United States v. Mitchell*[22] in which Justice Frankfurter, again speaking for the majority, indicated that the true interpretation of the rule laid down by the *McNabb* case should be that illegal detention of the accused will invalidate his confession only when the detention itself acts as an inducement.[23]

Thus, the Supreme Court has taken the position that it will scrutinize confessions used in state prosecutions for "inherently coercive" circumstances which would make such evidence inadmissible; and if such a confession is introduced the Court will set aside the judgment of conviction even though there is other evidence sufficient to sustain the conviction. In federal cases the Court will consider not only the constitutional question of due process but also "civilized standards of procedure and evidence" and will hold inadmissible any confession obtained before arraignment if the illegal detention acts as an inducement.

[18] Preliminary Draft of Federal Rules of Criminal Procedure, prepared by Advisory Committee on Rules of Criminal Procedure, Rule 5 (b).

[19] State v. Browning, 206 Ark. 791, 178 S.W. (2d) 77 (1944). Of course state courts are not bound by the McNabb decision, nor can the Supreme Court apply "civilized standards" in reviewing state convictions. The Court is limited in examining state convictions to the constitutional question of due process.

[20] United States v. Haupt 136 F. (2d) 661, (CCA 7th, 1943).

[21] *Id.* at 671.

[22] 322 U. S. 65 (1944). Accused, suspected of housebreaking, confessed immediately and spontaneously upon arriving at police station in custody of arresting officers. The confession was held admissible in a federal criminal prosecution although defendant was illegally detained for eight days before arraignment.

[23] As pointed out by Justice Reed in a concurring opinion to the Mitchell case, there seemed to be no such qualification in the McNabb opinion itself.

Much of the severe handicap on law enforcement officers resulting from these rules of restriction can and should be overcome by more intelligent and persevering investigations of criminal cases by police officers. Nevertheless, there are many crimes committed which can be solved only by the confession of the criminal himself; and it cannot be assumed that a criminal who is arrested after having evaded police officers for some time will spontaneously confess his guilt without police interrogation. An opportunity for a reasonable period of interrogation seems indispensable in many instances.[24]

Federal legislation to nullify the effect of the *McNabb* case by stating that a confession is not rendered inadmissible by the failure of federal officers to arraign promptly has apparently failed.[25] Similarly, according to the view now taken by the Supreme Court, legislation specifically allowing police officers a certain length of time to interrogate criminals before they are formally charged with a particular offense[26] would probably be declared unconstitutional.

Seemingly we are confronted with two possible alternatives. A drastic step might be taken by way of compensating for the undue advantage presently accorded accused persons as a result of the foregoing Supreme Court decisions. Abolish the use of confessions altogether and then, by constitutional amendment, modify the privilege against self-incrimination to the extent of permitting the court to compel an accused person to submit to a court room interrogation prior to and at the time of trial. It is suggested, however, that the more practical solution to the problem would be attained if the Supreme Court were to see fit to backtrack from the strict "inherently coercive" rule of the *Ashcraft* case in state proceedings as it apparently did regarding the previously rigid *McNabb* opinion respecting "civilied standards" in federal cases.

[24] See Inbau, Lie Detection and Criminal Interrogation (1942) 118.

[25] The bill, (H.R. 3690) introduced by Representative Hobbs in 1943, was referred to the House Judiciary Committee but has not as yet been returned.

[26] Such legislation was suggested by the proposed "Arrest Act" of Interstate Commission on Crime (1941) § 2.