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Abstracts of Recent Cases

include a confession or written statement within its scope.[60] Unless where specifically decreed, a majority of courts, however, have narrowly construed the applicable statutes, holding that a confession or statement of the defendant does not come within the statutory language.[61] For example, in a recent case, the Supreme Court of Arizona held that under a statute similar to rule 16 of the Federal Rules of Criminal Procedure, a defendant could not examine his confession prior to its being offered into evidence at the trial.[62] However, that court further held that the statute did not prohibit such discovery and that despite the statute, the court possessed the inherent common-law power to compel discovery and thus, granted inspection to the defendant.[63] If this view were adopted even in those states where the applicable statute has been construed to prevent discovery, an accused should nevertheless be able to examine his confession before trial, if such disclosure is considered essential to a fair trial.

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may be necessary or proper to be produced or exhibited as evidence on trial. ARK. STAT. ANN. § 43-2010 (1947).

The court may order the state to produce and permit the inspection and copying or photographing, by or on behalf of the moving party, of any designated papers, books, accounts, letters, photographs, objects, or other tangible things. FLA. STAT. ANN. § 909.18 (1944).

Upon motion of a defendant, the court, in any case pending before it, may order the State's Attorney to permit the defendant to inspect and copy or photograph designated books, papers, documents or tangible objects, including *written statements by the defendant*, obtained from or belonging to the defendant or obtained from others by seizure or process, upon a showing that items sought may be material to preparation of his defense and that the request is reasonable. Rule 5, CRIM. RULES OF PRAC. and PROC., MD. ANN. CODE GEN. LAWS (1952).

See also, IDAHO CODE ANN. § R 19-1530 (Supp. 1957); RULES OF CRIM. PROC., 42 MO. ANN. STAT. 105 (Vernon 1953); N. J. SUPER. and COUNTY CT. (Crim.) RULE *2:* 5-8(c) (1948).

[60] Rule 5, CRIM. RULES OF PRAC. and PROC., MD. ANN. CODE GEN. LAWS (1952); MINN. STAT. § 603.01 (1949); Senate bill No. 261 passed by the 1957 Illinois legislature and signed by the governor July 5, 1957.

[61] See, *e.g.*, *Williams v. State*, 143 Fla. 26, 197 So. 562 (1940) (other tangible things did not mean written confessions.); *Perez v. State*, 81 So.2d 201 (Fla. 1955); *State v. Tune*, 13 N.J. 203, 98 A.2d 881 (1956); *State v. Echevarria*, 38 N.J. Super. 415, 119 A.2d 183 (1955); *State v. Cicenia*, 6 N.J. 296, 78 A.2d 568 (1951), *cert. denied*, 350 U.S. 925 (1955).

[62] *State v. Superior Court of Santa Cruz County*, 81 Ariz. 127, 302 P.2d 263 (Ariz. 1956).

[63] *Id.* at p. 265.

ABSTRACTS OF RECENT CASES

Confession Obtained During an Unnecessary Delay in Arraignment Inadmissible.—The defendant, a nineteen year old of very limited intelligence, was arrested between 2:00 and 2:30 in the afternoon and, along with his two nephews, was taken to police headquarters. All were suspects in a District of Columbia rape case. After being questioned by numerous police officers for thirty to forty-five minutes, the defendant spent the rest of the afternoon in the company of his two nephews and his brother until about 4:00 p.m. At that time, all the suspects agreed to take a lie detector test, but the officer who operated the polygraph could not be found for almost two hours. Since the nephews of the defendant were examined first, the examination of the defendant did not begin until after 8:00 p.m. The defendant first indicated that he was guilty after one and a half hours of steady interrogation by the polygraph operator. At about 10:00 p.m., after the defendant had repeated his confession to other police officers, the first attempt was made to arraign the defendant, but this failed because a magistrate was not available. Later in the evening, the defendant signed a typed confession. He was finally arraigned the next morning. The signed confession was introduced in evidence at the defendant's trial, the defendant was found guilty of rape, and the court

of appeals affirmed the conviction. However, the Supreme Court held that the confession was obtained during an unnecessary delay in arraignment and was, therefore, inadmissible as evidence in a federal court. *Mallory v. United States*, 77 S. Ct. 1356 (1957).

Rule 5 (a) of the Federal Rules of Criminal Procedure provides that an officer making an arrest "shall take the arrested person *without unnecessary delay* before the nearest available magistrate," or other officer empowered to commit, for the purpose of arraigning the arrested person. (Emphasis supplied.) The Court said that the above rule and related rules formulate a procedure "that allows arresting officers little more leeway than the interval between arrest and the ordinary administrative steps required to bring a suspect before the nearest available magistrate." The Court recognized that, because of the use of the word "unnecessary" in rule 5 (a), some delay may be necessary. However, the Court stated that only a *brief* delay could be justifiably considered necessary. An example, according to the Court, of a brief delay would be a "quick verification" of a voluntary statement made by an arrested person. In addition, the Court said that the delay in arraignment, in order to be considered necessary, must not be of such a nature as to give the police an opportunity to extract a confession. Thus, the Court reiterated the strict *McNabb* rule, and indicated that the purpose of excluding a confession obtained during an unnecessary delay in arraignment, irrespective of its voluntary nature, was to punish the police for failing to promptly arraign an arrested person. For a criticism of this federal confession exclusionary rule see the recent article in the March–April, 1957 issue of the Northwestern University Law Review, "Restrictions in the Law of Interrogation and Confessions" by Fred E. Inbau. Professor Inbau's article is one of a symposium published in the Review under the title "Are the Courts Handcuffing the Police?"

False Statements to Grand Jury Still Perjury Even Though Correct Testimony Later Given—A known narcotic user, Jones, informed the District Attorney's office that the defendant, a police officer, and his partner were demanding money from him in return for police protection. Jones was supplied with a small recording device that successfully recorded a subsequent conversation between Jones, the defendant and the defendant's partner. Later, when the defendant was questioned before a grand jury about his conversation with Jones, he gave answers that were false and he even fabricated a different conversation. While on the stand, the defendant was given the opportunity to change his testimony and many of the questions were phrased with substantially the same wording as found in the recorded conversation. After the defendant became convinced that the District Attorney knew the true contents of the conversation in question, he asked permission to reappear before the grand jury, claiming that the reason that he did not tell all the facts in his prior testimony was his fear of divulging confidential police matters. Upon his re-examination, the defendant admitted that his previous testimony was false and he knew he was lying when he so testified. The defendant was then charged with perjury and convicted, and the Court of Appeals of New York affirmed the conviction, with one judge dissenting. *People v. Ezaugi*, 2 N. Y. 2d 439, 141 N.E. 2d 580 (1957).

The court rejected the contention of the defendant that false testimony is always cured when the correct testimony is later given. The court stated that this ancient doctrine of recantation was not of universal application, for, if it were, perjury would be encouraged. The court held that recantation was an effective defense "only if and when it is done promptly, before the body conducting the inquiry has been deceived or misled to the harm and prejudice of its investigation, and when no reasonable likelihood exists that the witness has learned that his perjury is known to the authorities." Thus, since the court found that the individual circumstances involved indicated that the recantation took place only after the defendant became aware of the fact that his perjury was known, and after the grand jury inquiry had been hampered, the defense of recantation was not available to the defendant. The fact that the defendant was an experienced

police officer who knew the effect of perjury, and that he intentionally attempted to mislead the grand jury with false testimony was also considered by the court.

The dissent indicated that the test requirement that recantation must take place before the inquiry is harmed is new and also hard to comprehend. By its very nature, the dissent pointed out, all perjury would tend to hinder any inquiry. Thus, the dissent argued that for such a requirement to have any meaning, the perjury must have produced an erroneous result in either an investigation or a trial, and such was not the case here. In addition, the dissent stated that requiring recantation prior to the time the perjurer finds out that his perjury is known severely limits the old recantation doctrine and drains from it all effectiveness. The dissent claimed that a perjurer, who knew his perjury was discovered, would no longer have any inducement to subsequently tell the truth.

Attempts to Conceal a Conspiracy do not Prolong the Life of the Conspiracy—The defendants were indicted on October 25, 1954, and the indictment alleged that they had conspired to defraud the United States by attempting to "fix" tax fraud cases. Because of the three year statute of limitations, the government had to prove that at least one overt act in furtherance of the conspiratorial agreement was performed after October 25, 1951. During the course of the trial, the government proved that the defendants were successful in obtaining "no prosecution" rulings in two tax cases from the Bureau of Internal Revenue in 1948 and 1949. To meet the requirements of the statute of limitations, the government introduced evidence to show that the conspirators attempted to conceal the conspiracy within the three year period. One defendant destroyed records; an accountant, was persuaded to lie to the grand jury; the secretary of one defendant was told not to talk to the grand jury; and the taxpayers were repeatedly told to keep quiet. However, the Court held that such acts did not continue the conspiracy after the purpose of the conspiracy had been accomplished. *Grunewald v. United States*, 25 U.S. LAW WEEK 4322 (U.S. May 28, 1957).

The Supreme Court rejected the government's contention that the proofs showed that a subsidiary element of the conspiracy to "fix" the tax cases was an agreement to conceal the conspiracy. The Court said that the record failed to show any direct evidence, like an express original agreement to conceal, on the part of the conspirators to continue the conspiracy beyond the completion of the object of the conspiracy, and that the government's contention was implied from factors that can be found in almost all conspiracies; secrecy and overt acts of concealment. The Court said, "we cannot accede to the proposition that the duration of a conspiracy can be indefinitely lengthened merely because the conspiracy is kept a secret, and merely because the conspirators take steps to bury their traces, in order to avoid detection and punishment after the central criminal purpose has been accomplished."

Veterans' Pension Payments Forfeited After 60 Days of Imprisonment—Public Law 85-24, effective June 1, 1957, forfeits all Veterans Administration pension payments, after a conviction of a felony or a misdemeanor, for that part of the sentence that exceeds 60 days. The payments will be resumed after the person entitled to them has been released from prison. Pension payments are those payments made to wartime veterans, or their eligible dependents, for disability or death *not connected* with the veterans' service. The new law does not affect compensation payments made to veterans or their survivors for disability or death resulting from wartime or peacetime service. The law provides that the Veterans Administration may pay the forfeited pension of a veteran to his eligible wife or children in the event of hardship. In addition, the forfeited pension of a veteran's widow may be paid to her eligible children.

(For other recent case abstracts see "Police Science Legal Abstracts and Notes", infra pp. 353–355)