

Admissibility of Involuntary Confessions Confirmed by Subsequent Facts

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privilege against self-incrimination, and an individual defendant, notwithstanding his constitutional rights against self incrimination which would [otherwise] excuse him from producing personal records, could be compelled to produce those records which he is required by law to keep."⁸⁷ Once again the opportunity to examine such returns has passed another hurdle.

CONCLUSION

Thus it is apparent that individual federal income tax returns are available to a moving party in civil actions, at least in the majority of the federal courts if they can be shown to be germane to the issues at hand, or to be likely to lead to other pertinent information, by use of the deposition-discovery rules.

Even the stumbling blocks of inadmissibility in evidence,⁸⁸ and the defense of self-incrimination do not preclude their availability to the attorney who makes intelligent use of these rules.

Clearly, the words "privilege" and "confidential" have lost much of their force with reference to these returns. Individual federal income tax returns can no longer be considered personal to the maker and the Revenue Department. The answer to the question "Are your income tax returns your own?" is most probably "No."

⁸⁷ *United States v. Jones*, 72 F. Supp. 48, 50 (D.C. Miss., 1947); *Bowles v. Amato*, 60 F. Supp. 361 (D.C. Colo., 1945).

⁸⁸ *Republic of Italy v. De Angelis*, 14 F.R.D. 519, 520 (S.D. N.Y., 1953): "Under rules relative to inspection of documents it is not necessary to establish the admissibility of the documents, but it is sufficient if the documents concern matters generally bearing on the issue and there is a reasonable probability that the documents contain material evidence."

ADMISSIBILITY OF INVOLUNTARY CONFESSIONS CONFIRMED BY SUBSEQUENT FACTS

Confessions, generally, must be voluntary before they are admissible in evidence. Thus statements of an accused person that are induced by threats or promises of benefit are inadmissible as evidence, because such statements are likely to be influenced by these inducements.

It sometimes happens that, by means of an involuntary confession, facts are discovered which are relevant to a case. Evidence of such facts is universally admissible.¹ The question then arises whether the confession or some part of it should also be admitted if it is verified by evidence discovered subsequently.

Before discussing what part, if any, of the confession should be ad-

¹ *Wigmore, Evidence* § 859 (3rd ed., 1940) (supp., 1955); *Wharton, Criminal Evidence* § 600 (11th ed., 1935).

mitted, the problem confronting the prosecution should be noted. For example, when the subsequently discovered fact is given in evidence alone, it is found to be quite insufficient in itself unless it can be linked with the accused.² Hence, the confession, or part of it, is sought to be introduced into evidence to show that the fact was discovered as a result of a statement of the accused, implying that the accused must have known of that fact.

The three views presented by the courts as to the extent that confessions leading to such discovery may be received into evidence are:³ (I) admit the entire confession to accompany the facts; (II) admit only the part of the confession that relates to the corroborating facts; and (III) admit no part of the confession but only the facts discovered thereby.

I. *Admit the entire confession to accompany the facts.*—Mr. Wigmore appeared to favor this rule. He stated: "If we are to cease distrusting any part [of the confession], we should cease distrusting all."⁴ He argued that subsequent facts and the whole confession that led to their discovery are admissible, claiming that this is the most logical and desirable view to take. The assumption is that improperly induced confessions are excluded *solely* because they are not entitled to credit. When they are confirmed or verified in part, the whole confession should be admitted in evidence since "it can hardly be supposed that at certain parts the possible fiction stopped and the truth began, and that by a marvellous coincidence the truthful parts are exactly those which a subsequent search (more or less controlled by chance) happened to confirm."⁵ This theory raises the question, why should it be assumed that a confession confirmed in part is true in its totality? It is certainly not difficult to imagine cases where a person, acting under an inducement, makes a confession that is a combination of true and false statements.

This rule is embodied in Texas law, where the admissibility of confes-

² The accused points out or tells where stolen property is: *Banks v. State*, 84 Ala. 430, 4 So. 382 (1888); *Berry v. United States*, 2 Colo. 186 (1873); *State v. Willis*, 71 Conn. 293, 41 Atl. 820 (1898); *People v. Ascey*, 304 Ill. 404, 136 N.E. 766 (1922); *Garrard v. State*, 50 Miss. 147 (1874); *State v. Winston*, 116 N.C. 990, 21 S.E. 37 (1895); or in case of homicide, the accused states where the body can be found: *Hall v. State*, 247 Ala. 263, 24 So. 2d 20 (1946); or tells what weapon was used: *Whitfield v. State*, 236 Ala. 312, 182 So. 42 (1938); *Gipson v. State*, 162 Miss. 480, 139 So. 868 (1932).

³ In *State v. Cocklin*, 109 Vt. 207, 194 Atl. 378, 380 (1937) the court sets out the three rules and cites cases supporting each one. The court goes on to say: "Since the reason for excluding involuntary confessions, as we have seen, is the likelihood of their being fabricated in the hope of escaping punishment, or obtaining leniency, the second rule seems the more logical." *Dupuis v. State*, 14 Ohio App. 67 (1918); *Harris v. Commonwealth*, 301 Ky. 818, 193 S.W. 2d 466 (1946); *Daniel v. State*, 212 Miss. 223, 54 So. 2d 272 (1951).

⁴ Wigmore, *Evidence* § 857 (3rd ed., 1940) (supp., 1955).

⁵ *Ibid.*

sions is largely governed by statute.⁶ The Texas courts are very emphatic in their decisions; for example, in *Rhodes v. State* it was said:

If the accused makes statements relative to the crime charged found to be true, and which conduce to establish his guilt, they are admissible regardless of whether he be under arrest, unwarned, or induced to make them by promises or threats.⁷

However, the rule does not apply where the facts so disclosed were known prior to and independently of the confession.⁸

This view has also been followed by the courts of Arkansas,⁹ Delaware¹⁰ and Kentucky¹¹ though it is not clear how far they will go in a given case.

II. *Admit only that part of the confession that relates to the corroborating facts.*—This is the English rule,¹² and the rule followed in many states. In *Banks v. State* the court stated it clearly and concisely:

. . . Though a confession may be obtained by the influence of threats or promises, if they disclosed extraneous facts, which show their truth and tend to prove the commission of the crime, so much of the confession as relates strictly to the facts discovered, and such facts, are admissible in evidence, but not the entire confession.¹³

The rule has been accepted upon the authority of Mr. Leach, who a century and a half ago said:

The reason of rejecting extorted confessions is the apprehension that the prisoner may have been thereby induced to say what is false; but the fact discovered shows that so much of the confession as immediately relates to it is true.¹⁴

The courts have selected this rule in preference to the first or third rule because they feel there is no logical reason for accepting the entire confes-

⁶ Texas Code Cr. Proc., Art. 727 (1925).

⁷ 97 Tex. Cr. 602, 262 S.W. 753, 754 (1924). In *Torres v. State*, 145 Tex. Cr. 365, 168 S.W. 2d 265 (1943), the court said the entire statement was admissible notwithstanding those portions of the statement that were in no way affected by finding the weapon with which the crime was committed. *Stelman v. State*, 123 Tex. Cr. 330, 58 S.W. 2d 831 (1933); *Campbell v. State*, 103 Tex. Cr. 488, 280 S.W. 1068 (1926); *Wells v. State*, 4 Tex. App. 20 (1878).

⁸ 22 C.J.S., Criminal Law § 831 (1940) (supp., 1956); *Rains v. State*, 94 Tex. Cr. 576, 252 S.W. 558 (1923); *Baggett v. State*, 65 Tex. Cr. 425, 144 S.W. 1136 (1912).

⁹ *Shufflin v. State*, 122 Ark. 606, 184 S.W. 454 (1916).

¹⁰ *State v. Brick*, 2 Harr. 530 (1835).

¹¹ *Boughman v. Commonwealth*, 206 Ky. 441, 267 S.W. 231 (1924).

¹² *Stephens, Digest of the Law of Evidence*, Art. 23 (12th Rev., 1948); *Phipson, Evidence* 273 (9th ed., 1952); *Cockle, Cases and Statutes on Evidence* 197 (8th ed., 1952).

¹³ *Banks v. State*, 84 Ala. 430, 431, 4 So. 382, 383 (1888). Other decisions in accord: *Minton v. State*, 20 Ala. App. 176, 101 So. 169 (1924); *Whitehead v. State*, 16 Ala. App. 427, 78 So. 467 (1918); *People v. Ascey*, 304 Ill. 404, 136 N.E. 766 (1922); *State v. Cocklin*, 109 Vt. 207, 194 Atl. 378 (1937).

¹⁴ Leach's note, 1 Leach Crown Cases, 265 (4th ed., 1815).

sion as being true when it is not totally confirmed by subsequent facts. Nor, is there any reason to exclude the entire confession where portions of it have been substantiated by the subsequently discovered facts. This reasoning is based solely on whether or not a confession is trustworthy.

III. *Admit no part of the confession but only the facts discovered thereby.*—This is the prevailing doctrine in this country.¹⁵ Thus a witness is allowed to testify that the stolen property was found in a certain place, but he cannot say it was discovered as a result of a confession made by the prisoner. Yet, we realize that if the property is found in an empty lot, it may be of no value to the prosecution unless it can prove that the prisoner knew it was there.

It is clear from the previous analysis that there has been no uniformity in judicial treatment of the admissibility of an involuntary confession in part or in toto by the subsequently discovered facts. Aside from the basic rule that such confessions are inadmissible because they are not entitled to credit, the courts felt that only by treating them as such can the police be discouraged from extracting them.¹⁶

The moving though unarticulated, reason (for excluding confessions improperly induced) is that prosecuting authorities are prone to rely too heavily upon confessions and to neglect the thorough investigation which they would otherwise make and which their duty demands. . . .¹⁷

In other words, the laws of evidence can be used as a method for improving police practices and protecting rights of individuals. This is necessary because the civil remedies that a prisoner has against the police may be quite ineffective, either to deter them, or to compensate him for harm he may suffer. Further, the likelihood of criminal prosecution being brought against the police is very slight.

If the courts accepted the first view, the law enforcement agencies would have unlimited power to commit illegal acts in order to extort a confession. "The multiplication of crimes as a remedy for crime would be

¹⁵ *Jones v. State*, 5 Ga. 835 (1885); *State v. Height*, 117 Iowa 650, 91 N.W. 935 (1902); *State v. Dooley*, 89 Iowa 584, 57 N.W. 414 (1894); *State v. Mortimer*, 20 Kan. 93 (1878); *Commonwealth v. Phillips*, 26 Ky. L. Rep. 543, 82 S.W. 286 (1904); *Whitney v. Commonwealth*, 24 Ky. L. Rep. 2524, 74 S.W. 257 (1903); *Taylor v. Commonwealth*, 19 Ky. L. Rep. 836, 42 S.W. 1125 (1897); *Rector v. Commonwealth*, 80 Ky. 468 (1882); *Commonwealth v. James*, 99 Mass. 438 (1868); *Brister v. State*, 211 Miss. 365, 51 So. 2d 759 (1951); *Smith v. State*, 166 Miss. 893, 144 So. 471 (1932); *Whitley v. State*, 78 Miss. 255, 28 So. 852 (1900); *Garrard v. State*, 50 Miss. 147 (1874); *State v. Ruck*, 194 Mo. 416, 92 S.W. 706 (1906); *State v. Winston*, 116 N.C. 990, 21 S.E. 37 (1895); *State v. Knapp*, 70 Ohio St. 380, 71 N.E. 705 (1904); *Commonwealth v. Johnson*, 213 Pa. 432, 62 Atl. 1064 (1906); *State v. Middleton*, 69 S.C. 72, 48 S.E. 35 (1904).

¹⁶ *The Third Degree—Its Historical Background, the Present Law and Recommendations*, 43 Ky. L. J. 392 (1955).

¹⁷ *Model Code of Evidence*, Rule 505, Comment c (1942).

a very absurd and disastrous public policy. . . ."¹⁸ The second view would be acceptable if the only question propounded was whether or not the confession was trustworthy. Hence, the best way to secure fair treatment for the accused and to deter the zeal of the police in extorting confessions, is to deny to the latter the fruits of their illegal acts. The court in *Wilson v. State* declared:

While the character of the confession is ordinarily shown by answers to appropriate questions, the court should look beyond these to the condition, situation, and character of the accused and the circumstances surrounding him.¹⁹

Therefore, it would seem the third view is the most just.

On the other hand, it may be doubted that the rules of evidence ought to be used as a potential threat to the police to force them to go about their job properly. One may share the conviction of Wigmore, that the fewer obstacles there are in the way of admitting the confession, the greater is the justice attained in the end.

CONCLUSION

In the last analysis, whether or not involuntary confessions, which the police illegally obtain, ought to be admitted depends upon the community involved. A very important factor is the respect for the law that is found in the law-enforcement agencies of the community, and the relating rarity of their deliberate departure from ordinary standards of justice. The existence of a large criminal class and a high crime rate also may be other important factors in determining the social need of the community that should determine its laws.

It is doubtful if any part of the confession ought to be admissible, even though confirmed by the discovery of evidence made in consequence of the confession because the reasons for excluding improper confessions are complex and not based solely on a presumed untrustworthiness.

¹⁸ *Rusher v. State*, 94 Ga. 363, 21 S.E. 593, 594 (1894).

¹⁹ 84 Ala. 426, 428; 4 So. 383, 384 (1888).

FEDERAL JURISDICTION UNDER THE COMMERCE CLAUSE AND INTRASTATE EXTORTION

What is the status of the law as to federal jurisdiction over cases wherein an intrastate telephone message was used for the purpose of extortion or the perpetration of fraud? The bases upon which federal jurisdiction is sought are the extortion by interstate communications¹ and the fraud by wire² sections of the Federal Criminal Code.

The abovementioned code provisions will be referred to as the extor-

¹ 18 U.S.C.A. 875.

² 18 U.S.C.A. 1343.