University of Miami Law Review

Volume 4 | Number 4 Article 15

6-1-1950

Evidence -- Holding as a Material Witness in Order to Secure a Confession

EVIDENCE — HOLDING AS A MATERIAL WITNESS IN ORDER TO SECURE A CONFESSION

Defendant was committed to jail as a material witness in connection with a homicide He was subjected to protracted questioning for five days, at the end of which time he confessed to the murder and was arraigned. The trial court refused the defendant's request that the attention of the jury be called to the statutory provision which requires that a defendant be arraigned without unnecessary delay,[1] and also, that the jury be informed of its right to consider any unnecessary delay in arraignment in determining the voluntary character of the confession. On appeal, *held*, that since the jury could not have found the commitment to be unjustified, or a mere pretense, the requested charges were properly refused. *People v. Perez*, 90 N.E.2d 40 (N.Y. 1949), *cert. denied*, 70 S.Ct. 483 (1950).

The mere fact that a defendant has been illegally detained by the police has been ruled as not to bar the admission of a confession while he was so held,[2] even though the purpose of the detention was to obtain a confession.[3] The primary and the seemingly sole factor, as regards the admissibility of a confession, is that it was voluntarily made. Involuntary confessions are excluded, not because of any illegality or immorality in obtaining them, but because they are unreliable evidence.[4] It must be kept in mind, however, that in most jurisdictions a confession cannot warrant a conviction without additional proof of the *corpus deliciti*.[5]

The instant case arose under a statute providing for the arraignment of a suspect without any unnecessary delay.[6] Statutes to the same effect have been enacted in many of the other states.[7] Nevertheless, the courts, while chastizing the police for such tactics, have held that illegal delay in arraignment was not sufficient to render a confession inadmissible.[8] Some courts have held that illegal delay in arraignment was only a factor to be weighed with others in determining whether a confession has

---

1. N.Y. CRIM. CODE OF PROC. § 165 (1887).

2. People v. Nagle, 25 Cal.2d 216, 153 P.2d 244 (1944); People v. Elmore, 227 N.Y. 397, 14 N.E.2d 451 (1938); People v. Alex, 265 N.Y. 192, 192 N.E. 289 (1934).

3. Dougherty v. State, 184 Ga. 537, 192 S.E. 223 (1937); People v. Alex, *supra*.

4. WIGMORE, EVIDENCE § 822 (3d ed. 1940).

5. People v. Roach, 215 N.Y. 592, 109 N.E. 618; N.Y. CRIM. CODE OF PROC. § 395.

6. N.Y. CRIM. CODE OF PROC. § 165 ("The defendant must in all cases be taken before the magistrate without unnecessary delay, and he may give bail at any hour of the day or night.")

7. See note 1 *supra*; McNabb v. United States, 318 U.S. 332, 342 (1943).

8. People v. Elmore, *supra*; People v. Alex, *supra*; People v. Kelly, 264 App. Div. 14, 35 N.Y.S.2d 55 (3d Dep't 1942); People v. Cohen, 243 App. Div. 245, 276 N.Y. Supp. 851 (2d Dep't 1935); People v. Tybus, 219 N.Y. 18, 113 N.E. 538 (1916). *But cf.* People v. Thomlinson, 400 Ill. 555, 81 N.E.2d 434 (1948).

any testimonial value.[9] However, the coercion and threats which usually accompany illegal commitment have caused a majority of the courts to hold that the voluntary nature of the confession is a question of fact for the jury, in the determination of which the jury should be informed of the statutory provisions which govern the arraignment of a suspect.[10] Thus trial courts have been reversed when the defendant was illegally detained for a period as short as twenty-four hours, when the requested charge as to the arraignment statutes was refused.[11] In most cases of this type the attendant evidence of lengthy periods of interrogations and threats used by the police, while the defendant was illegally detained, raised as a substantial issue the voluntary character of the confession.[12]

In *McNabb v. United States*,[13] the Supreme Court set aside a conviction of a lower federal court obtained in contravention of a federal arraignment statute.[14] The Court, exercising its power to establish standards of evidence in federal courts, held inadmissible a confession obtained through protracted questioning while the defendant was illegally detained. But since it cannot formulate rules of evidence in cases arising at state level[15] the court seized upon the "third degree" methods of questioning, usually accompanying such confessions, as rendering them involuntary and hence violative of due process of law. The duty of observing the constitutional rights of a defendant supersedes the rules of state procedure; so that the requirements of due process of law limit the freedom of the state in establishing policies of judicature.[16]

In the instant case the detention of the defendant as a material witness without benefit of friends or counsel afforded the police an opportunity to elicit a confession which undoubtedly would have been difficult to extract had statutory provisions been observed. It is recognized that the utility of obtaining confessions from hardened criminals by protracted and forceful questioning must be balanced against the rights of the defendant. But in the instant case the rights of the defendant as

---

9. People v. Mummiani, 258 N.Y. 394, 180 N.E. 94 (1932).

10. People v. Cohen, 266 App. Div. 23, 41 N.Y.S.2d 710 (3d Dep't 1943); People v. Richmond, 266 App. Div. 903, 42 N.Y.S.2d 745 (4th Dep't 1943); People v. Alex, *supra*; People v. Kelly, *supra*; People v. Elmore, *supra*.

11. People v. Cohen, *supra* note 8; People v. Kelly, *supra*.

12. People v. Valletutti, 291 N.Y. 276, 78 N.E.2d 485 (1948).

13. 318 U.S. 332 (1943); *accord*, Upshaw v. United States, 335 U.S. 410 (1948); *cf.* Mitchell v. United States, 322 U.S. 65 (1944). See 3 MIAMI L. Q. 307 (1949).

14. 18 U.S.C. § 595. See also FED. R. CRIM. P. 5(a) (requiring arraignment without unnecessary delay).

15. Ashcraft v. Tennessee, 322 U.S. 143 (1944); Lisemba v. California, 314 U.S. 219 (1941); White v. Texas, 310 U.S. 530 (1940); Canty v. Alabama, 309 U.S. 629 (1940); Chambers v. Florida, 309 U.S. 227 (1940).

16. Brown v. Mississippi, 297 U.S. 278 (1936).

guaranteed by the New York Constitution[17] and statutes[18] were needlessly sacrificed to the ends of summary law enforcement, since his arraignment as a material witness afforded the police an opportunity to keep him in custody and thereby easily obtain a confession. When officers delay in taking a defendant before a magistrate for the purpose of obtaining a confession, they are in reality violating the constitutional provision that "no courts save those provided for in this Constitution shall be established."[19] It is submitted that a confession obtained by criminal means should not be introduced into evidence, thereby denying a defendant the specific protection afforded by statutes.

TORTS — WAIVER NOT PERMITTED TO EXTEND STATUTE OF LIMITATIONS WHERE LIBEL IS BASIS OF ACTION

An action was brought to recover from the defendant the proceeds of a book which allegedly libeled the plaintiff. The one year statute of limitations[1] barred an action for recovery of damages for libel. Plaintiff brought this action under the six year statute[2] for money had and received. *Held,* complaint dismissed. The remedy for libel does not embrace the right to waive the tort and sue in assumpsit. *Hart v. E. P. Dutton & Co.,* 93 N.Y.S.2d 871 (Sup. Ct. 1949).

In situations where an election of remedies is allowed, the effect of waiving the tort and suing in assumpsit is to make the "contract" statute of limitations applicable.[3] Since the election of remedies is not granted automatically at the option of the plaintiff, the nature of the tort he chooses to waive is important. Generally, a waiver has been permitted in cases of conversion,[4] deceit and fraud[5] to allow recovery from the defendant for anything which had been taken from the plaintiff.[6] Usually, however, the election is denied in negligence[7] and trespass,[8] especially where there has been no benefit to the defendant.

---

17. N.Y. CONST., Art. I, § 6.
18. N.Y. CODE OF CRIM. PROC. § 165, 395.
19. Commonwealth v. Mayhew, 178 S.W.2d 928, 934 (Ky. 1943).

1. N.Y. CIVIL PRACTICE ACT § 51.
2. *Id.* at § 48.
3. Dougherty v. Norlin, 147 Kan. 565, 78 P.2d 65 (1938). *But cf.* Schlick v. N.Y. Dugan Bros., Inc., 175 Misc. 182, 22 N.Y.S.2d 238 (N.Y. City Ct. 1940).
4. *See* Terry v. Munger, 121 N.Y. 161, 24 N.E. 272 (1890).
5. McCall v. Superior Court, 1 Cal.2d 527, 36 P.2d 642 (1934); Addy v. Stewart, 69 Idaho 357, 207 P.2d 498 (1949). *But see* Brevard County Bldg. & Loan v. Sumrall, 101 Fla. 1189, 1197, 133 So. 888, 891 (1931).
6. *See* Wilson v. Shrader, 79 S.E. 1083, 1086 (W.Va. 1913).
7. Trimming v. Howard, 52 Idaho 412, 16 P.2d 661 (1932).
8. Tightmeyer v. Mongold, 20 Kan. 90 (1875).