



1949

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Recommended Citation

Elizabeth Gann, Note, *Admissibility of Confessions Obtained during Illegal Detention*, 3 Sw L.J. 452 (1949)
<https://scholar.smu.edu/smulr/vol3/iss4/4>

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ADMISSIBILITY OF CONFESSIONS OBTAINED DURING ILLEGAL DETENTION

“THE true test of admissibility is that the confession is made freely, voluntarily and without compulsion or inducement of any sort.”¹ This rule was announced in the early case of *Wilson v. United States*.² In *Bram v. United States*,³ decided by the court the following year, this test was applied with the further explanation that a confession to be voluntary must be free of any action on the part of officials which is calculated to produce either hope or fear in the mind of the accused.⁴ Subsequent cases cited and followed this holding.⁵

It was not until 1942 that any material change was made in this rule. In *McNabb v. United States*,⁶ decided in that year, the prisoners were held from Wednesday night until Saturday morning under constant interrogation from large numbers of arresting officers. They were not allowed to see each other nor any outside person, nor were they taken before a magistrate until the expiration of this period. The court held that such detention without arraignment was in violation of the Federal Code of Criminal Procedure,⁷ stating:

¹ *Wilson v. United States*, 162 U. S. 613, 623 (1896).

² *Ibid.*

³ 168 U. S. 532 (1897).

⁴ “The rule is not that in order to render a statement admissible the proof must be adequate to establish that the particular communications contained in a statement were voluntarily made, but it must be sufficient to establish that the making of the statement was voluntary; that is to say that from the causes, which the law treats as legally sufficient to engender in the mind of the accused hope or fear in respect to the crime charged, the accused was not involuntarily impelled to make a statement, when but for the improper influence he would have remained silent.” *Id.* at 549.

⁵ *Lisenba v. California*, 314 U. S. 219 (1941); *Wan v. United States*, 266 U. S. 1 (1924); *Hardy v. United States*, 186 U. S. 224 (1902).

⁶ 318 U. S. 332 (1942).

⁷ 18 U. S. C. § 595 (1927) PERSONS ARRESTED TAKEN BEFORE NEAREST OFFICER FOR HEARINGS: “It shall be the duty of the marshal, his deputy, or other officer, who may

"The evidence elicited from the petitioners in the circumstances disclosed here must be excluded. For in their treatment of the petitioners the arresting officers assumed functions which congress has explicitly denied them. They subjected the accused to the pressures of a procedure which is wholly in-compatible with the vital but very restricted duties of the investigating and arresting officers.⁸ . . .

* * * * *

"We hold only that a decent regard for the duty of courts as agencies of justice and custodians of liberty forbids that men should convict upon evidence secured under the circumstances revealed here."⁹

It is not clear from the opinion whether the illegal detention, or the continued and coercive questioning was the controlling reason. However, as will be observed from the excerpts quoted above the Court stresses that it is deciding only that the facts before it are such as to render the confessions inadmissible as not having been voluntary.

In *United States v. Mitchell*,¹⁰ decided two years later, the Court apparently did not consider the *McNabb* decision as holding that every confession obtained during illegal detention would of itself be inadmissible, without a showing of further circumstances. The Court referred to the criminal procedure statute found in the *McNabb* case, which required that arresting officers must with reasonable promptness bring arrested persons before a committing authority; and then quoted from Justice Frankfurter as follows:

"... this procedural requirement checks resort to those reprehensible practices known as the 'third degree' which, though universally rejected as indefensible, still find their way into use . . . A statute carrying such purposes is expressive of a general legislative policy to which courts should not be heedless when appropriate situations call for its application."¹¹

arrest a person charged with any crime or offense, to take the defendant before the nearest United States commissioner or the nearest judicial officer having jurisdiction under existing laws for a hearing, commitment, or taking bail for trial . . ."

⁸ *McNabb v. United States*, *supra* note 6 at 341.

⁹ *Id.* at 347.

¹⁰ 322 U. S. 65 (1944).

¹¹ *McNabb v. United States*, *supra* note 6 at 344.

The *Mitchell* opinion then went on to say:

"In the circumstances of the McNabb case we found such an appropriate situation, in that the defendants were illegally detained under aggravated circumstances. . . . Inexcusable detention for the purpose of illegally extracting evidence from an accused, and the successful extraction of such inculpatory statements by continuous questioning for many hours under psychological pressure, were the decisive features in the McNabb case which led us to rule that a conviction on such evidence could not stand."¹²

This construction was further emphasized by the holding of the Court on the facts existing in the *Mitchell* case.¹³

This was the state of the law as to the admissibility of confessions obtained while in custody of officers, before arraignment, when the recent case of *Upshaw v. United States*¹⁴ arose. The suspect in this case was taken into custody and held for thirty hours before he was brought before a magistrate for arraignment. During this period he was questioned several times, but never for more than thirty minutes at a time, and then by only one officer. At the end of this period the prisoner confessed and was taken before a magistrate. The defendant was convicted by the trial court and this conviction was affirmed by the United States Court of Appeals for the District of Columbia¹⁵ on the reasoning that while such detention was unlawful under Rule 5(a) of the Federal Rules of Criminal Procedure,¹⁶ the confession was not obtained as the result of such illegal detention, and therefore was voluntary and should not be held inadmissible on that ground. On appeal the Supreme

¹² *Mitchell v. United States*, *supra* note 10 at 69.

¹³ In this case *Mitchell* was arrested and confessed within a few minutes after his arrival at the police station. He was then detained for eight days before he was taken before a magistrate. The court held: "Here there was no disclosure induced by illegal detention, no evidence was obtained in violation of any legal rights..." *Id.* at 70.

¹⁴ 69 Sup. Ct. 170 (1949).

¹⁵ *Upshaw v. United States*, 168 F. (2d) 167 (App. D. C. 1948).

¹⁶ Rule 5(a) reads: "An officer making arrest... shall take the arrested person without unnecessary delay before the nearest available committing magistrate."

Court, in a five to four decision,¹⁷ reversed the conviction. While purporting to follow the *McNabb* case the Court stated that "a confession is inadmissible if made during illegal detention due to failure promptly to carry a prisoner before a committing magistrate, whether or not the 'confession' is the result of torture, physical or psychological."¹⁸

The result of this decision, as pointed out in the dissent,¹⁹ is to declare that any confession obtained during an unlawful detention is *per se* inadmissible. It is believed that this conclusion is not necessarily compelled by the *McNabb* case. As shown in the discussion of the *Mitchell* case above, the Court itself felt at this time that a proper reading of the opinion in the *McNabb* case required some stronger form of coercion than a mere retention in violation of the Code of Criminal Procedure. Moreover, the *McNabb* case appears clearly distinguishable from the *Upshaw* case upon the facts. In the latter case there were no long sessions of questioning, no pressure applied, and it did not appear that the prisoner was held under unpleasant conditions. On the other hand, in the *McNabb* case the "circumstances,"²⁰ which were so strongly relied upon by the Court, were clearly such as would be calculated to frighten the uneducated defendants in the case, thereby causing an unreliable confession.

What will be the probable result of such a decision on arresting officers? The Rule of Criminal Procedure²¹ involved provides that the officer must take the arrested person before the nearest available magistrate, without unnecessary delay. There is nowhere any

¹⁷ The majority opinion was written by Mr. Justice Black; Mr. Justice Reed wrote a vigorous dissent in which he was joined by Mr. Chief Justice Vinson, Mr. Justice Jackson, and Mr. Justice Burton.

¹⁸ *Upshaw v. United States*, *supra* note 14 at 172.

¹⁹ *Id.* at 179.

²⁰ In the *McNabb* case the defendants were accused of shooting an internal revenue agent. All of the McNabbs had only gone through the first few grades in school, they had never been out of the county. These prisoners were taken and questioned for long hours by a number of the deceased's fellow officers. They were awakened at night for questioning and were returned to the place of the crime. They were not allowed to see each other or any outside person.

²¹ Rule 5(a) of the Federal Rules of Criminal Procedure.

indication as to what will be considered an unnecessary delay. Presumably the decision will be left to the courts in each individual case. Thus law enforcement officers face a difficult choice. Upon arresting a suspect, if they hold him even for a few hours, they run the risk of having any confession which he may make, no matter how voluntary, excluded because it was obtained during an illegal detention. It frequently happens that at the moment of arrest, the officers have not assembled adequate evidence upon which a magistrate can hold a suspect. In a majority of cases it is almost impossible to obtain such evidence without detaining the accused for questioning and investigation. The alternatives open to arresting officers: They can retain their prisoner for questioning in the hope that the Court will find that under the circumstances there was no unnecessary delay; or they can take him before the magistrate immediately, without the necessary evidence, in which case the probability is that the magistrate will be forced to release him without preferring charges.

Exclusion of so-called involuntary confessions, such as the one involved in the *Upshaw* case, may be based on one of two lines of reasoning. First, that such confessions are not reliable and refusal to admit them prevents the use of false evidence.²² Secondly, restricting the admission of confessions which were not completely voluntary tends to discourage the use by police officials of third degree methods.

It is stated by Wigmore that "the principle upon which a confession is treated as inadmissible is that under certain conditions it becomes untrustworthy as testimony."²³ Such a circumstance exists when in the mind of the accused false confession appears less fraught with hazards than a continuation of the present status.²⁴ This was the basis upon which the early courts and writers

²² "The aim of the rule that a confession is inadmissible unless it was voluntarily made is to exclude false evidence. Tests are invoked to determine whether the inducement to speak was such that there is a fair risk the confession is false." *Lisenba v. California*, *supra* note 5 at 236.

²³ WIGMORE, EVIDENCE § 822 (3d ed. 1940).

²⁴ "This possibility arises whenever the innocent person is placed in such a situa-

based their exclusion of involuntary confessions.²⁵ However, it does not seem reasonable that mere detention by officers, with no accompanying force or threats, either physical or psychological, would constitute such a circumstance as would be likely to cause a normal person to confess falsely in the hope of escaping the existing circumstances.

Rejection of involuntary confessions as a means of punishment for officials who do not adhere to the prescribed rules was not stressed by the federal courts until the opinion in the *McNabb* case. There it is pointed out that experience shows the necessity of protecting the accused from overzealous law enforcement officers. Admission of the confession in the *Upshaw* case was denied on the same reasoning. No mention was made in the opinion that this confession should be considered unreliable because of the manner in which it was obtained. The reason which was stressed as the basis for the decision was that the statement was obtained during an illegal detention, and while the prisoner was admittedly being held for the purpose of obtaining such information.

The courts may well have made an unwise decision in selecting this method of disciplining law enforcement officers. While punishing law enforcement agents for disregarding the prescribed procedure in regard to arrests, they may very well allow a man who has committed some serious offense against the laws of the United States to go free for lack of evidence, when the prosecution has his own confession voluntarily made and thoroughly reliable, even though obtained during an illegal detention. The result of such action is, in effect, not to punish the law enforcement officers individually, but to inflict the punishment upon society as a whole by turning loose in its midst criminals who by their own admissions should be incarcerated.

Elizabeth Gann.

tion that the untrue acknowledgment of guilt is at the time the more promising of two alternatives between which he is obliged to choose; that is, he chooses any risk that may be in falsely acknowledging guilt, in preference to some worse alternative associated with silence." *Ibid.*

²⁵ Cases cited note 5 *supra*; 2 WHARTON'S CRIMINAL EVIDENCE § 622 (11th ed. 1912).