Buffalo Law Review

Volume 11 | Number 1 Article 80

10-1-1961

Evidence—Withdrawn Guilty Plea Not Admissible for Any Purpose in Criminal Proceedings

Timothy C. Leixner

Follow this and additional works at: https://digitalcommons.law.buffalo.edu/buffalolawreview

 Part of the Evidence Commons

Recommended Citation

Timothy C. Leixner, *Evidence—Withdrawn Guilty Plea Not Admissible for Any Purpose in Criminal Proceedings*, 11 Buff. L. Rev. 213 (1961).
Available at: https://digitalcommons.law.buffalo.edu/buffalolawreview/vol11/iss1/80

This The Court of Appeals Term is brought to you for free and open access by the Law Journals at Digital Commons @ University at Buffalo School of Law. It has been accepted for inclusion in Buffalo Law Review by an authorized editor of Digital Commons @ University at Buffalo School of Law. For more information, please contact lawscholar@buffalo.edu.

> the error in the context of that record of sufficient gravity to warrant a new trial.
>
> But it can scarcely be argued that every time a judge in his charge calls a pretrial statement a "confession" there must be a reversal without regard to the course and direction of the record as a whole.[56] (Emphasis added, Citations omitted.)

Another Appellate Division case, *People v. Lee*,[57] again emphasized that this improper designation of pretrial statements is only important in its overall impression on the jury by the following statement:

> We do not think that the jurors were misled by the use of the word "confessions" in the charge or that their minds were not clearly directed to the true issues involved . . . or that the verdict was against the law or that justice requires a new trial. . . .[58]

That case, involving murder in the first degree, was affirmed.[59] However, the dissenting opinion in the instant case argues that *Lee* is distinguishable because an exception was not taken by the trial counsel to the designation of the admissions as confessions. To the writer it is impossible to believe that this Court was controlled in its determination by this minor technical point, especially in a situation wherein the crime charged was murder and the penalty death.

The Court holds here that the error did not influence the verdict, thereby affirming the Appellate Division's denial of a new trial

Chief Judge Desmond, dissenting, views the error as highly prejudicial, for "with the issue of guilt so close, this was a dire blow to the defense and an error most grave."[60] This writer cannot agree with the interpretation Judge Desmond gives to the record. If the case is viewed as a close one, an error such as this would certainly be a highly prejudicial and reversible error in that the jury might well be swayed by the fact that the defendant had confessed to the crime. But here we have the defendant's own account of what had transpired, an admission that he had administered a severe beating to a four-year-old child. The account itself was highly incriminating and the defendant's own words must have had a tremendous impact on the jury. It is difficult for this writer to believe that a jury would not consider these statements as tantamount to an admission of guilt however they were labeled by the trial judge.

P. C. B.

WITHDRAWN GUILTY PLEA NOT ADMISSIBLE FOR ANY PURPOSE IN CRIMINAL PROCEEDINGS

The long standing rule in New York has been that although a trial court may in its discretion allow a plea of guilty to be withdrawn at any time before

56. Id. at 272, 123 N.Y.S.2d at 86.
57. 4 A.D.2d 770, 165 N.Y.S.2d 338 (2d Dep't 1957).
58. Id. at 771, 165 N.Y.S.2d at 342.
59. People v. Lee, 4 N.Y.2d 843, 173 N.Y.S.2d 815 (1958).
60. People v. Kingston, supra note 44 at 391, 208 N.Y.S.2d at 962.

judgment,[61] the withdrawn plea could still be admitted at trial as evidence of guilt.[62] In *People v. Spitaleri*,[63] the Court of Appeals unanimously reversed an Appellate Division decision[64] based on this rule and held that a plea of guilty be allowed to be withdrawn "is out of the case forever and for all purposes."[65]

In the *Spitaleri* case, the defendant had been allowed to withdraw his plea of guilty to an attempt to commit the crime of possessing narcotics with intent to sell.[66] He was subsequently convicted of possessing narcotics with intent to sell, after a trial in which the former plea was introduced as part of the prosecution's direct evidence and was discussed at length in the court's charge as being in the nature of a confession. The conviction was affirmed in the Appellate Division without opinion, apparently on the strength of *People v. Steinmetz*.[67]

In the *Steinmetz* case, the court had held that when a defendant pleads guilty in the presence of a judge and his own counsel, and if what he is pleading guilty to is made clear to him, the fact that the court allows him to withdraw the plea does not alter his prior admission which will be accepted as true and admitted in evidence. The rationale of this rule is that the introduction of the withdrawn plea of guilty shows conduct inconsistent with the claim of innocence. "The defendant's prior plea of guilty which he had withdrawn by permission of the court was to be treated like any other admission or confession, and subject to the same rules relating to its weight and effects."[68]

The dissent in the *Steinmetz* case,[69] which has since become the prevailing line of thought in most jurisdictions where the question has been raised,[70] was based on the theory that despite its potential probative value, the plea was allowed to be withdrawn in the discretion of the court. In exercising this discretion, the court must have found that there is some doubt that the plea was made with understanding and intent to confess a crime, and that circumstances exist which render it unfair to hold the defendant to this previous statement of guilt.[71] "The withdrawal of a plea of guilty is a poor privilege, if, notwithstanding its withdrawal, it may be used in evidence under the plea of not guilty."[72] The force of these arguments was recognized by the Appellate

61. N.Y. Code Crim. Proc. § 337:
The court may in its discretion, at any time before judgment upon a plea of guilty, permit it to be withdrawn, and a plea of not guilty substituted.
62. People v. Steinmetz, 240 N.Y. 411, 148 N.E. 597 (1925).
63. 9 N.Y.2d 168, 212 N.Y.S.2d 33 (1961).
64. 11 A.D.2d 785, 205 N.Y.S.2d 175 (2d Dep't 1960).
65. Supra note 63 at 173, 212 N.Y.S.2d at 36.
66. N.Y. Penal Law § 1751 (2).
67. Supra note 62.
68. People v. Steinmetz, supra note 62 at 415, 148 N.E. at 598.
69. Supra note 62 at 419, 148 N.E. at 599.
70. Kercheval v. United States, 274 U.S. 220 (1927); followed in 17 states, see e.g., State v. Anderson, 173 Minn. 293, 217 N.W. 351 (1927); State v. Joyner, 228 La. 927, 84 So. 2d 462 (1955); Contra, Morrissey v. Powell, 304 Mass. 270, 23 N.E.2d 411 (1939).
71. People v. Steinmetz, supra note 62 at 419, 148 N.E. at 599.
72. Kercheval v. United States, supra note 70 at 224.

Division in *People v. Ariano*,[73] when it questioned the doctrine of the *Steinmetz* case.

The rule of the *Steinmetz* case was rejected within two years by a unanimous Supreme Court in *Kercheval v. United States*.[74] There the Court said, "The effect of the court's order permitting withdrawal was to adjudge that the plea of guilty be held for naught. Its subsequent use as evidence against petitioner was in direct conflict with that determination. . . . As a practical matter, it could not be received in evidence without putting petitioner in a dilemma utterly inconsistent with the determination of the court awarding him a trial."[75] That this is true is shown in the *Spitaleri* case. The Court of Appeals noted that with the proof of the earlier plea of guilty admitted, the defendant was in effect forced to take the stand in his own behalf. There he swore that he had pleaded guilty on his lawyer's advice, although protesting innocence, because the lawyer had promised to get him a suspended sentence. Furthermore, when the defendant objected to his former lawyer (not trial counsel) taking the stand and testifying that the defendant had confessed his guilt to him, the Court ruled that the defendant, by giving evidence as to his dealings with the lawyer, had waived the attorney-client privilege.[76]

Despite this record, the Court specifically declined to go as far as the federal court in *Wood v. United States*[77] in saying that using a plea of guilty as evidence forces a defendant in substance, if not in form, to testify against himself. Also, the Court did not say that a plea of guilty is not an admission of guilt under other circumstances. That it is has been well established.[78] A plea of guilty once withdrawn, however, may no longer be employed in the same case for any purpose, and admission of the plea in evidence constitutes reversible error.

T. C. L.

EVIDENCE OF DISABILITY BENEFITS IS NOT ADMISSIBLE FOR DETERMINING DAMAGES

In *Healy v. Rennert*,[79] plaintiff, who was a fireman operating an emergency vehicle, brought an action for personal injuries sustained in an intersectional collision, when he was proceeding through a traffic signal indicating 'stop.' The trial court entered judgment upon the verdict in favor of defendant, and the Appellate Division affirmed the judgment.[80] A unanimous Court of Appeals

73. 264 App. Div. 426, 35 N.Y.S.2d 818 (2d Dep't 1942).
74. Supra note 70.
75. Supra note 70 at 223-224.
76. People v. Spitaleri, supra note 63 at 173, 212 N.Y.S.2d at 36.
77. 128 F.2d 265, 274 (D.C. Cir. 1942).
78. Ando v. Woodberry, 8 N.Y.2d 165, 203 N.Y.S.2d 74 (1960), noted 10 Buffalo L. Rev. 187 (1960); People v. Bretagna, 298 N.Y. 323, 83 N.E.2d 537 (1949), cert. denied, 336 U.S. 919 (1949).
79. 9 N.Y.2d 202, 213 N.Y.S.2d 44 (1961).
80. 9 A.D.2d 927, 196 N.Y.S.2d 563 (2d Dep't 1960).