Buffalo Law Review

Volume 10 | Number 1 Article 46

10-1-1960

Criminal Law—Voluntariness of Repudiated Confession

Buffalo Law Review

it does not follow that the defendant intended fraud or was unreasonable in saying there had been no material change in his financial condition.

The position taken by the dissent was that the evidence sustained the trial courts conclusion and that its judgement should be affirmed. First, because the trier of fact has the benefit of observing the witnesses and therefore a better opportunity to assess their credibility, and second, because the Appellate Division could reverse only if the trial court's conclusion was at variance with the conclusion that a prudent trier of fact would have reached.[12] The dissent argues that on the basis of the defendant's knowledge as to his real estate transactions, he could not reasonable have thought that there was no change in his financial condition.

The question of fraudulant intent largely depends on the facts in any given case. Here there was no proof as to the defendant's actual financial condition, therefore the accuracy of the oral statement is mere conjecture. The rule, "fraud must be proved and is not presumed" was clearly applicable here.[13]

CRIMINAL LAW

VOLUNTARINESS OF REPUDIATED CONFESSION

Once again the issue of the voluntariness of an inculpatory confession is broached for general consideration. *People v. Vargas*[1] presents the classic situation where defendant confessed to the police and later recanted his confession, claiming it had been made under coercion and duress. He also claimed, however, that there had been an unnecessary delay before his arraignment, in violation of Section 165, Code of Criminal Procedure,[2] and therefore the confession taken during the period of the illegal delay must as a matter of law be excluded. At approximately six o'clock on the evening of February 13, 1958, defendant was taken into custody for questioning along with several other persons in connection with the killing of one Lillian Mojica. He made a statement to the police at approximately nine P.M., and was questioned again at eleven o'clock for about an hour and a half. Defendant was again interrogated on the morning of Feb. 14th beginning at five o'clock A.M. and lasting until eight o'clock A.M., at which time he was brought some coffee and pastry. The investigation of the police continued through the morning. When confronted with the results of the police investigation at about eleven-thirty A.M., defen-

12. Prime v. City of Yonkers, 131 App. Div. 110, 115 N.Y. Supp. 305 (2d Dep't 1909), aff'd 199 N.Y. 542, 93 N.E. 1129 (1910).

13. Low v. State, 281 App. Div. 309, 120 N.Y.S.2d 339 (3d Dep't 1953), affirmed 305 N.Y. 913, 114 N.E.2d 470 (1953).

1. 7 N.Y.2d 555, 200 N.Y.S.2d 29 (1960).

2. N.Y. Code Crim. Proc. § 165:
The defendant must in all cases be taken before a magistrate without unnecessary delay.

dant confessed the crime and made the inculpatory statements which are here in question. Later that day he repudiated the statements and said, in regard to the admission, that he had been told what to say and struck by the police. Defendant was arraigned at eleven o'clock on the morning of the 15th of February. The Defendant was convicted of murder in the first degree, which judgment has been unanimously affirmed by the Court of Appeals.

The voluntariness of the confession must be determined by the jury on the facts and testimony presented to it on trial. Here the testimony of the police that no force or promises had been used in acquiring the confession, and the claims of the defendant that the statements were made under duress were squarely put to the jury. The determination as to whether this was a voluntary confession or not was for them alone and that decision may not be overturned by a court of appellate jurisdiction.[3] Further, the evidence in the record strongly substantiated the finding by the jury that the inculpatory statements were voluntarily given.

In the federal courts a confession which is made during a period of illegal detention is inadmissible. This rule, however, is not based upon any denial of due process of the accused, but upon the right of the federal courts to supervise the procedure in the federal courts.[4] This is not the case in New York. The test in New York as to whether a confession is admissible is whether it was voluntarily given,[5] and the fact that it was taken during a period of unnecessary delay prior to arraignment does not make it inadmissible.[6] The general rule is that any unnecessary delay in arraignment is merely one fact to be considered in determining whether the confession was voluntary.[7] Here defendant could not have been arraigned before ten A.M. and the confession was made at eleven-thirty A.M., therefore the delay amounted to an hour and a half. This was not an unnecessary or illegal delay because during this period the police were still checking out the details of defendant's earlier statement.[8] The period between eleven-thirty A.M. when the confession was made and eleven A.M. the following morning when defendant was arraigned was an unnecessary delay, but this does not affect the voluntariness of the confession as it had already been made. On this point the United States Supreme Court has held that a confession, when made during a period of legal detention, would be admissible and would not be invalidated by a subsequent unwarranted delay in arraign-

3. People v. Perez, 300 N.Y. 208, 90 N.E.2d 40 (1949); People v. Cohen, 223 N.Y. 406, 119 N.E. 886 (1918); People v. Taylor, 138 N.Y. 398, 34 N.E. 275 (1893).

4. Mallory v. United States, 354 U.S. 449 (1957); Upshaw v. United States, 355 U.S. 410 (1948).

5. People v. Mummiani, 258 N.Y. 394, 180 N.E. 94 (1932), wherein defendant was held 36 hours unlawfully without arraignment, until a confession was obtained. The confession was excluded.

6. People v. Ellmore, 277 N.Y. 397, 14 N.E.2d 45 (1938).

7. People v. Doran, 246 N.Y. 409, 159 N.E. 379 (1927).

8. United States v. Leviton, 193 F.2d 848 (2d Cir. 1951).

ment.[9] New York has adopted the same rule in the recent case of *People v. Scully* wherein the Court of Appeals said, ". . . the illegality of defendants detention does not retroactively change the circumstances under which he made the disclosure."[10]

It is significant to note that prior to the present case and the aforementioned *Scully* case, there had been confusion as to whether the unnecessary delay in arraignment which went to the voluntariness of a confession should be considered as of the time the confession was made or when the accused was arraigned. The decision in the *Scully* case was handed down in 1958 and therein the Court of Appeals made it quite clear that the illegal period of the detention after the confession has been made will not effect its validity; but in that case the confession had been orally made before there had been any opportunity to arraign the accused. In the instant case the Court of Appeals has apparently adopted a standard which would provide for a reasonable period between the time when the accused might have been arraigned and when the confession is made, in determining when, as a matter of law, there had been an unnecessary delay in the arraignment.[11]

INADMISSABILITY OF CONFESSION TAKEN UNDER OATH BEFORE JUSTICE OF PEACE

The appellant was brought before a Justice of the Peace for arraignment, but before he was arraigned, or even notified of his constitutional rights, he voluntarily confessed under oath. During the trial, the appellant repudiated the confession. The prosecution relied heavily on the fact that the confession had been sworn to before a judicial officer, under oath, to overcome the effect of the appellant's testimony, to convict him of murder in the first degree. The Court of Appeals reversed the conviction and ordered a new trial.[12] The Court held that the admission of the confession into evidence was erroneous, as, "The jury may well have regarded the fact that the confession was sworn to before the magistrate in the courtroom as a virtual guarantee of its trustworthiness, as overwhelming proof that the statement contained a true account of what had happened . . ."[13]

The actions of the magistrate were in violation of the New York Code of Criminal Procedure which provides that it is the duty of the magistrate to immediately inform the defendant of his constitutional rights prior to undertaking any judicial proceedings.[14] The Code also provides that should the defendant

9. United States v. Mitchell, 322 U.S. 65 (1944).
10. 4 N.Y.2d 453, 455, 176 N.Y.S.2d 300, 301 (1958).
11. "Under all the circumstances of this case—especially in light of the fact that defendant could not have been arraigned before the morning of February 14, when the Felony Court opened—it could hardly be claimed that a delay in arraignment until the afternoon of that day would have been unnecessary and unreasonable as a matter of law." People v. Vargas, supra note 1 at 566, 200 N.Y.S.2d 38 (1960).
12. People v. Foley, 8 N.Y.2d 153, 203 N.Y.S.2d 65 (1960).
13. Id at 155, 203 N.Y.S.2d 65.
14. N.Y. Code Crim. Proc. § 188.