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Criminal Law—Inadmissibility of Confession Taken Under Oath Before Justice of Peace

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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.

volunteer a statement, it must be recorded by the magistrate, but it must not be sworn to under oath.¹⁵

The District Attorney argued that the confession was admissible, since it was not taken in violation of Section 395 of the New York Code of Criminal Procedure.¹⁶ The primary requirement for the admission of the confession into evidence is that it be voluntary. The reason for this is that those factors which may induce an involuntary statement, may also induce statements which are not true. Therefore, a confession must be from the prisoner alone and uninfluenced by extraneous causes. When the judicial oath is administered as above, to one accused of a crime, immediately after he is arrested, when his mind may be agitated, and when he is not informed as to his constitutional rights, any confession under that oath is not admissible as evidence.¹⁷ Even though the defendant is not threatened directly, the Court felt that in the giving of the oath, under such circumstances, there is sufficient coercion, so that the confession cannot be relied on as evidence of guilt.

The question of the validity of a confession is usually a question of fact to be decided by the jury,¹⁸ except in situations where the court can exclude the confession as a matter of law, as where a verdict that the confession was freely made would be against the weight of the evidence.¹⁹ To hold that a confession is more valid because it was sworn before a magistrate, as was implied by the prosecution during the trial, would deprive the defendant of his right to have the issue of the confession's validity decided by the jury. This implication if allowed to influence the jury, would make the determination of the issue dependent not on the facts, nor the jury's opinion, but merely on the basis that the confession happened to be taken under oath by a judicial officer.

The decision in *People v. Foley*²⁰ is designed to discourage a practice by which a magistrate, through the use of the prestige which accompanies the administration of an oath in a courtroom, can intimidate a defendant into confessing. Whenever a defendant is placed before the power and influence of a court, he is entitled to the constitutional protections attendant to courtroom proceedings.²¹ In the instant case these constitutional protections were lacking. The appellant was without counsel, he was not advised of his right to counsel, or of his privilege against self-incrimination. Under these circumstances, the fact that the confession was sworn under oath before a Justice of the Peace, should not be allowed to influence the jury that it is absolutely true, especially

15. *Id.* § 198.

16. A confession of a defendant, whether in the course of judicial proceedings or to a private person, can be given in evidence against him, unless made under the influence of fear produced by threats, or unless made upon a stipulation of the District Attorney, that he shall not be prosecuted therefor.

17. *People v. McMahon*, 15 N.Y. 384 (1857).

18. *People v. Pignataro*, 263 N.Y. 229, 188 N.E. 720 (1934).

19. *People v. Catlafano*, 284 App. Div. 569, 132 N.Y.S.2d 217 (3d Dep't 1954).

20. *Supra* note 12.

21. *People v. Mondon*, 103 N.Y. 211, 8 N.E. 496 (1886).

since the appellant has repudiated that confession. Indeed it has been held that where the defendant is uncertain of his rights, and is faced with the power of a court, that a confession under these circumstances would be too unreliable to be admitted as evidence.²²

RIGHTS OF DEFENDANT CONCERNING ERRONEOUSLY LABELED INDICTMENT

Due process requires that an indictment inform the defendant in a criminal proceeding that he is charged with the substantial elements of a given crime.²³ In determining the sufficiency of an indictment, it is the acts alleged which constitute the crime charged, rather than the descriptive label which they are given.²⁴ An error in naming the crime in the accusatory clause of the indictment will not in itself afford grounds for granting a motion to quash the indictment.²⁵ In New York, as the result of *People v. Englese*,²⁶ if a defendant pleads guilty to such a mislabeled indictment he may be entitled, as a matter of right, to withdraw his plea and go to trial on the merits.

Ordinarily, an application for permission to withdraw a plea of guilty prior to judgment is addressed to the discretion of the trial court.²⁷ In *People v. Englese*,²⁸ the defendant pleaded guilty to an indictment erroneously labeling as a felony acts which constituted no more than a misdemeanor. Five years later, his motion to vacate the judgment was granted by the trial court.²⁹ His application for permission to withdraw the plea of guilty was denied, however, and he was resentenced *nunc pro tunc* for the misdemeanor. The Appellate Division affirmed,³⁰ but in a 4-3 decision the Court of Appeals reversed holding that once it was determined that the defendant had pleaded to a felony charge, it was an abuse of the court's discretion to deny him his fundamental right to plead anew to the indictment considered as one charging a misdemeanor.

In this decision the Court affirms its position that permission to withdraw a plea of guilty should be granted when the circumstances indicate that the plea was not freely entered — whether induced by misunderstanding of the charges,³¹ mistake of all concerned,³² or improper coercion by the court such as a promise of a lighter sentence.³³ This rule can only be applied to the instant case, however, by the dubious proposition that the defendant pleaded guilty *because* he was charged with a felony. When considered in the context of the above notice requirements for due process, it appears highly unlikely that the error in

22. *Supra* note 17.

23. *Paterno v. Lyons*, 334 U.S. 314 (1948).

24. *People v. Peckens*, 153 N.Y. 576, 47 N.E. 883 (1897).

25. *People v. Sullivan*, 4 N.Y. Crim. 193 (1885).

26. 7 N.Y.2d 83, 195 N.Y.S.2d 641 (1959).

27. N.Y. Code Crim. Proc. § 337.

28. *Supra* note 26.

29. County Court, Queens County.

30. 8 A.D.2d 744, 187 N.Y.S.2d 681 (2d Dep't 1959).

31. *People v. Gowasky*, 244 N.Y. 451, 155 N.E. 737 (1927).

32. *People v. Englese*, *supra* note 26.

33. *People v. Farina*, 2 N.Y.2d 454, 161 N.Y.S.2d 88 (1952).