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Evidence—Admissibility of Confession

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defendant's conviction, particularly since he never raised the issue of ownership until appeal.¹²

Little sympathy can be felt for the plight of the defendant. Certainly, the defendant knew whether or not he was the owner of the premises, and it does not seem to be placing an undue burden on him to require that he contest his ownership, once the deed is placed in evidence. If he had, in some manner, taken issue as to the sufficiency of the deed fixing his ownership, the prosecution would have been given an opportunity to supply additional proof in the matter.

Admissibility of Confession

Although confessions obtained during the course of an illegal detention are summarily excluded from evidence in the federal courts,¹³ in the courts of New York State such confessions are considered as evidence if the jury finds them to have been voluntarily made.¹⁴ However, the federal rule has been limited to cases where the confession was obtained during the illegal portion of the period before arraignment. *U. S. v. Mitchell*¹⁵ held that where the illegal delay began after the confession was procured such delay was immaterial to the issue of admissibility.¹⁶

The rationale of the *Mitchell* case has been incorporated into New York law by the unanimous decision of the Court in the case of *People v. Scully*.¹⁷ There the Court held that it was not error for the trial court to refuse to charge that the delay in arraignment, subsequent to the procuring of the confession, was unnecessary as a matter of law. In cases where the confession was obtained during the course of an illegal detention it has been held error not to so charge.¹⁸ Thus the time of the confession and not the time of arraignment is the controlling circumstance.

The Court's rationale is that, since the confession was procured before the detention became illegal, no disclosure was induced by the illegal delay. The illegality of the detention does not retroactively change the circumstances under which disclosures were made.¹⁹

12. There was other evidence in the record showing defendant as owner of the premises as late as one year before the critical date.

13. *McNabb v. U. S.*, 318 U.S. 332 (1943); *Mallory v. U. S.*, 354 U.S. 449 (1957).

14. *People v. Mummiani*, 58 N.Y. 394, 180 N.E. 94 (1932).

15. 322 U.S. 65 (1944).

16. *Accord*, *Symons v. U. S.*, 178 F.2d 615 (9th Cir. 1949); *People v. Zamara*, 66 Cal. App. 166, 152 P.2d 180 (1944); *Mares v. Hill*, 118 Utah 484, 222 P.2d 811 (1950).

17. 4 N.Y.2d 453, 176 N.Y.S.2d 300 (1958).

18. *People v. Alex*, 265 N.Y. 192, 192 N.E. 289 (1934).

19. Cf. *State v. Jenkins*, 1 Vt. 377 (1803), where court held threats of violence made after defendant confessed to be of no consequence.