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Criminal Law—Confession—Right to Warning

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underlying this section to be in close proximity to those policies underlying that section of the Penal Law which governs proof of death in a murder trial.[26]

The statute is satisfied by additional proof that the crime charged has been committed.[27] Even if the crime charged was based on a felony murder rationale, it is reversible error to require additional proof of the underlying felony beyond that in the confession thereof. The only additional proof required is that there has been a death due to criminal means.[28]

A medical examiner's testimony that there is a corpse bearing marks of murder has been held to be sufficient additional proof that a murder has been committed.[29] Furthermore, where the fact of the murder has been accepted throughout the trial as an undisputed, established fact by the defendants, it is not reversible error for the judge to so charge, unless the defendants have requested the judge to submit the question to the jury.[30]

It would seem that the dissent has a valid objection to the opinion rendered by the majority in that the evidence as to the commission of the crime should have been given to the jury for its consideration. It is error for a judge to decide as a matter of law what should properly be decided as a mattter of fact.[31]

Since the fact of the murder was treated as having been established throughout the trial, and since the defendants failed to request that it be submitted to the jury, the charge, albeit erroneous, did not prejudice the rights of the defendants to a fair trial.

Confession—Right to Warning

Section 335-a of the Code of Criminal Procedure provides that a magistrate, upon arraignment in this state of a resident charged with a traffic law violation, and before accepting a plea, must instruct the defendant at the time of arraignment in substance that a plea of guilty is equal to a conviction after trial and that, in addition to penalizing the driver, his license to drive is subject to suspension and revocation as prescribed by law.[32]

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26. N. Y. Penal Law §1041. No person can be convicted of murder . . . unless the death of the person alleged to have been killed and the fact of the killing by the defendant, as alleged are each established as independent facts, the former by direct proof and the latter beyond a reasonable doubt.
27. *People v. Lytton,* 257 N. Y. 310, 178 N. E. 290 (1931).
28. *People v. Gold,* 295 N. Y. 772, 66 N. E. 2d 176 (1946).
29. *People v. Lytton,* 257 N. Y. 310, 178 N. E. 290 (1931).
30. *People v. Jackerson,* 247 N. Y. 36, 159 N. E. 715 (1928).
31. See note 28 *supra.*
32. N. Y. CODE CRIM. PROC. §335-a.

In *People v. Duell*[33] the question was raised as to whether a person whose license has already been revoked is entitled to the magistrate's instruction under section 335-a of the Code of Criminal Procedure. The Court held that since section 335-a was for the protection of licensed drivers, the defendant, whose license had been previously revoked for driving while intoxicated,[34] need not have been informed as to consequences which could not be visited upon him.

The problem of whether or not section 335-a must be read in all arraignments for traffic law violations or just in those cases where the driver's license is subject to suspension and revocation has generally been dealt with in the same manner as in the instant case.[35]

The decision is not an entirely new one under the section. In 1950 it was similarly held that an unlicensed driver was not entitled to the instruction.[36] This rather limited exception was further extended to include those cases where the license in question was not liable to suspension or revocation.[37]

In two apparently contradictory cases[38] decided about the same time as the *Duell* case, the Appellate Division required the reading of section 335-a in all arraignments and not just in those cases where the defendant is liable to lose his license. One case,[39] however, distinguishes the situation where the defendant has no license and in this regard substantially supports the reasoning in the instant case. It may be noted that these cases had to do with defendants who, at the time of arraignment, had valid driver's licenses. It no doubt was not meant that the section must be read to unlicensed drivers but that the instruction must be read in cases where the driver has a valid license which he does not stand to lose in this particular arraignment, but which he may eventually lose for repeated infractions.

Judge Desmond, with Judge VanVoorhis concurring, dissented, though cited no authority for his position that section 335-a must be read even in situations such as this. The dissent felt that the statute must be literally followed and that exceptions to the carefully drawn statute should not be allowed. The dissent also noted the burden on the magistrate to discover whether or not each particular driver has a license. The case clearly provides an example of the Court's refusal

33. 1 N. Y. 2d 132, 134 N. E. 2d 106 (1956).
34. N. Y. VEHICLE & TRAFFIC LAW §71, subd. 2 (b).
35. *Ross v. MacDuff*, 309 N. Y. 56, 127 N. E. 2d 806 (1955); *People v. McBride*, 202 Misc. 544, 118 N. Y. S. 2d 615 (Sup. Ct. 1952).
36. *People v. Oboler*, 276 App. Div. 908, 94 N. Y. S. 2d 57 (2d Dep't 1950).
37. *Long v. MacDuff*, 284 App. Div. 61, 131 N. Y. S. 2d 718 (4th Dep't 1954); *People v. McBride, supra*, note 35.
38. *Astman v. Kelly*, 1 App. Div. 2d 449, 151 N. Y. S. 2d 589 (4th Dep't 1956). *Hubbell v. MacDuff*, 1 App. Div. 2d 407, 151 N. Y. S. 2d 435 (4th Dep't 1956).
39. *Astman v. Kelly, supra* note 38.

to require the performance of a "meaningless ritual" by enforcing a legislative mandate which is intended to protect a different class of people. A point in the dissent's favor would be those cases where the driver's license has merely been suspended and not revoked. In this situation the driver, who has an expectancy of the reinstatement of his license, certainly has something to lose by not having the instruction read.

Evidence—Circumstantial

In *People v. Leyra*[40] the defendant was again convicted of murder in the first degree after reversals of two previous convictions.[41] In the third trial Leyra was convicted on circumstantial evidence based on his remarks to the interrogating officer, after examining a photograph of the murder room and noticing that a chair was out of place which meant that he was present. The prosecution further introduced as evidence Leyra's allegedly fabricated alibi, that at the time of the murder he was asleep in his mistress's apartment, the disappearance of his overcoat and his false explanation concerning the purchase of a new suit, raincoat and shoes.

The Court of Appeals reversed the conviction saying that the circumstantial evidence was insufficient to support a conviction. The sufficiency of circumstantial evidence depends upon whether the proof logically points to the defendant's guilt and excludes, to a moral certainty, every other reasonable hypothesis, that is, whether the proven facts are consistent with and point to defendant's guilt and are inconsistant with his innocence.[42] In such circumstances, the facts from which the inferences are to be drawn must be established by direct proof: the inferences may not be based on conjecture, supposition, suggestion, speculation or upon other inferences and the conclusion sought must flow naturally from the proven facts.[43]

The assertion of false explanations or alibis as well as the destruction or concealment of evidence comes within the broad category of conduct evidencing a conciousness of guilt and, therefore, is admissible and relevant on the question of a defendant's guilt in prosecution for murder.[44] However in cases where convictions resulted from the use of such evidence to show consciousness of guilt, it

40. *People v. Leyra,* 1 N. Y. 2d 199, 134 N. E. 2d 475 (1956).
41. *People v. Leyra,* 302 N. Y. 353, 98 N. E. 2d 553 (1951). The defendant was taken to a "wired" room where he was questioned by a psychiatrist and subsequently confessed. The Court of Appeals reversed the conviction of the first trial on the ground that the confession made to the psychiatrist was the product of mental and psychological coercion. On retrial, the defendant was convicted solely on the basis of several other confessions made shortly after the confession to the psychiatrist. The Supreme Court invalidated the conviction, holding that the subsequent confessions, being "simply parts of one continuous process", were tainted by the same poison that invalidated the prior confession. *Leyra v. Denno,* 347 U. S. 556 (1954).
42. *People v. Harris,* 306 N. Y. 348, 118 N. E. 2d 470 (1954).
43. *People v. Weiss,* 290 N. Y. 160, 48 N. E. 2d 306 (1943).
44. 1 WHARTON CRIMINAL EVIDENCE 207, 209 (12th ed. 1955).