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## Criminal Law—Evidence—Circumstantial

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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 dissenter'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*<sup>40</sup> the defendant was again convicted of murder in the first degree after reversals of two previous convictions.<sup>41</sup> 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 inconsistent with his innocence.<sup>42</sup> 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.<sup>43</sup>

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 consciousness of guilt and, therefore, is admissible and relevant on the question of a defendant's guilt in prosecution for murder.<sup>44</sup> 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).

was used only for purposes of lending strength to other and more tangible evidence.<sup>45</sup>

In this case there was no other and more tangible evidence, but merely the vague and inconclusive statement that defendant made to the interrogating officer,<sup>46</sup> which was made under the strain of continual interrogation, coupled with severe sinus pains and emotional instability resulting from shock over the recent murder of his parents. Under these circumstances the inferences from such admissions tend to show that defendant was troubled, distracted, floundering and confused, searching for an explanation to an unknown question. It was not the kind of unequivocal and conclusive statement which would give rise to strong, logical inferences of defendant's guilt. The inferences drawn by the jury were not grounded on concrete and directly proved facts but were based on conjecture and therefore the Court of Appeals rightly reversed the conviction.

#### Evidence—False Testimony of Witness

In *People v. Savvides*,<sup>47</sup> a witness for the prosecution falsely testified that no agreement existed between him and the District Attorney under which he was to receive lenient treatment in return for his testimony against the Defendant. The Court of Appeals held that it was substantial and reversible error for the District Attorney not to have exposed this lie.<sup>48</sup>

The fact that the falsehood bore upon the credibility of the witness rather than the defendant's guilt is immaterial. Nor does the quantum of evidence indicating the Defendant's guilt make this error insubstantial. "It is for jurors, not judges of an appellate court such as ours, to decide the issue of guilt."<sup>49</sup>

The Court, taking a dim view of the ultimate value of such agreements, points out that its revelation to the jury would have had substantial bearing on their determination of the witness' veracity. The agreement in itself could suggest to the jury that the witness' testimony could well exceed the bounds of veracity in order to put himself in a better position. Further, the knowledge that the witness had deliberately lied under oath would have lowered the jury's estimate of his regard for the truth.

Thus where a witness for the prosecution falsely testifies to the existence of an agreement between himself and the prosecuting attorney, it is incumbent upon the prosecuting attorney to reveal this lie.

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45. *Commonwealth v. Webster*, 5 Cush. 295 (Mass. 1850).

46. You know what that means Captain? It means me. Who else could it be?

47. 1 N. Y. 2d 554, 136 N. E. 2d 853 (1956).

48. *Accord, People v. Creasy*, 236 N. Y. 205, 221, 140 N. E. 563, 569 (1923).

49. *People v. Mieczko*, 298 N. Y. 153, 163, 81 N. E. 2d 65, 70 (1948).