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Evidence

Stanley A. Jones

EVIDENCE

CONFESSIONS INDUCED BY PHYSICAL VIOLENCE — SUBSEQUENT DISCOVERY OF FACTS WHICH CONDUCE TO ESTABLISH GUILT

THE recent case of *Holt v. State*[1] reiterates and confirms the Court of Criminal Appeals' holding in *Colley v. State*,[2] decided in 1942, with regard to exclusion of involuntary confessions even though confirmed by facts discovered through the confession. In the *Holt* case, the defendant was arrested in Jefferson County, and whipped and beaten until he confessed to burglary in Hardin County. He was turned over to the Sheriff of Hardin County and made another confession through use of which the stolen goods were found. This confession was admitted on the theory of subsequently discovered facts corroborating the confession.

On rehearing, it was urged that the confession was not voluntary—that officers of Jefferson County had told the defendant that if he did not make the second confession, they would bring him back and repeat the whippings—and that the confession was made under fear of further violence. In reversing, the Court said:

> "Article 727, Code of Criminal Procedure, permitting use of a confession where, in connection with such confession, the accused makes statements of fact or circumstances that are found to be true, which conduce to establish his guilt, has no application when a confession is obtained as the result of physical or mental pain."[3]

It is obvious that there may be, and in the cases here considered is, conflict between the two rules involved, *i.e.*, the rule excluding confessions obtained through physical violence, and that admitting confessions and the facts discovered through them

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[1] ..... Tex. Crim. Rep ....., 208 S. W. (2d) 643 (1948).
[2] 143 Tex. Crim. Rep. 390, 158 S. W. (2d) 1014 (1942).
[3] 208 S. W. (2d) 643, 646 (1948).

which point to the defendant's guilt, even though the confession was involuntary.

In the *Colley* case, this conflict was pointed out, and the court, in ruling the confession inadmissible, stated that if the case of *Bryant v. State,*[4] and similar cases,[5] be construed to the contrary, they were thereby modified so as to conform with the present opinion, or, if necessary, overruled.

Prior to the time of the *Colley* case, the rule would appear to have been different. The *Bryant* case is representative. It was there held that a confession obtained *by force* was admissible if in connection therewith, defendant made statements which led to the finding of the stolen property.

The only possible distinction between these rules would seem to lie in their employment of the terms "by force" and "physical or mental pain". However it is submitted that no valid distinction may be drawn inasmuch as the broad term "by force" necessarily comprehends and includes the latter term.

In anticipation of possible future rulings clarifying this issue, it is useful to analyze the underlying policy for the exclusion of involuntary confessions. The general rule is that confessions obtained through the use of threats, fear or physical violence are inadmissible. The basic reason is that such confessions are deemed untrustworthy as testimony.[6] The courts have concluded that when a person is subjected to certain stresses, he may falsely acknowledge guilt in order to gain a temporary advantage. An ancillary reason is the policy of the courts to discourage "third degree" methods by the police force, and for the protection of the public from such methods. The theory is that if confessions so obtained are held automatically inadmissible, police officers will cease to employ such tactics.

In applying these principles to the instant case, it would seem

[4] 131 Tex. Crim. Rep. 274, 98 S. W. (2d) 189 (1936).

[5] Brooks v. State, 130 Tex. Crim. Rep. 561, 95 S. W. (2d) 136 (1936); Warren v. State, 130 Tex. Crim. Rep. 456, 94 S. W. (2d) 463 (1936).

[6] McCormick and Ray, Texas Law of Evidence § 529 (1937).