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EVIDENCE—ADMISSIBILITY IN A CIVIL SUIT OF A PLEA OF GUILTY IN A CRIMINAL CASE

Plaintiff was injured by an automobile, driven by the individual defendant, and owned by defendant-World Wide Rent-A-Car, under lease to defendant-Olin's Rent-A-Car. During the trial, on cross-examination, the plaintiff sought to elicit that the defendant had pleaded guilty to the offense of driving too fast for conditions.¹ The trial judge allowed this into evidence, over defendant's objection. The jury returned a verdict for the plaintiff. On appeal to the First District Court of Appeal, *held*, reversed and remanded: Since evidence of an adjudication of guilt in a criminal case is inadmissible in a civil suit,² the defendant's plea of guilty is likewise inadmissible, because a guilty plea is synonymous with evidence of a conviction. *World Wide Rent-A-Car v. Boshnack*, 184 So.2d 467 (Fla. 1st Dist. 1966).

In this case, the court refused to differentiate between the admissibility of a plea of guilty as an admission against interest, and its inadmissibility as evidence of a criminal conviction. Admittedly, the court was "unable to comprehend that distinction."³

This inability, resulting in the holding that a plea of guilty in a criminal case is inadmissible in a related civil suit, has for the present⁴ placed Florida in the clear minority. Forty-three states have been presented with this question, and an overwhelming majority have held that a plea of guilty is admissible.⁵ Of the five minority states, four base their

1. The speed of the defendant's automobile was an issue in this case. The plaintiff's attorney stated to the court that this testimony was being offered as an admission against interest. *World Wide Rent-A-Car v. Boshnack*, 184 So.2d 467 (Fla. 1st Dist. 1966).

2. *Stevens v. Duke*, 42 So.2d 361 (Fla. 1949).

3. *World Wide Rent-A-Car v. Boshnack*, *supra* note 1, at 469.

4. It should be noted that at the date of this writing, the appellee has petitioned the Florida Supreme Court for a writ of certiorari, and that briefs have been filed on the jurisdictional issue. As yet, there has been no action by the supreme court.

5. *Eschelbach v. William S. Scull Co.*, 293 F.2d 599 (3d Cir. 1961); *Ritter v. Griswold*, 2 Ala. App. 618, 56 So. 860 (Ct. App. 1911); *Monsma v. Williams*, 385 P.2d 107 (Alaska 1963); *Hays v. Richardson*, 95 Ariz. 263, 389 P.2d 260 (1964); *Harbor v. Cambell*, 235 Ark. 492, 360 S.W.2d 758 (1962); *Teitelbaum Furs, Inc. v. Dominion Ins. Co., Ltd.*, 25 Cal. Rptr. 559, 375 P.2d 439 (1962); *Gancy v. Dohna*, 25 Conn. Supp. 138, 198 A.2d 66 (Super. Ct. 1964); *Boyd v. Hammond*, 187 A.2d 413 (Del. 1963); *Frost v. Hays*, 146 A.2d 907 (D.C. Munic. Ct. 1958); *Webb v. May*, 91 Ga. App. 437, 85 S.E.2d 641 (Ct. App. 1955); *McCottrell v. Benson*, 32 Ill. App. 2d 367, 178 N.E.2d 144 (Ct. App. 1961); *Dimmick v. Follis*, 123 Ind. App. 701, 111 N.E.2d 486 (Ct. App. 1953); *Book v. Datema*, 256 Iowa 1330, 131 N.W.2d 470 (1964); *Musick v. Enos*, 95 Kan. 397, 148 Pac. 624 (1915); *Race v. Chappell*, 304 Ky. 788, 202 S.W.2d 626 (Ct. App. 1947); *Smith v. Southern Nat'l Life Ins. Co.*, 134 So.2d 337 (La. Ct. App. 1961); *Lipman Bros. Inc. v. Hartford Acc. & Indem. Co.*, 149 Me. 199, 100 A.2d 246 (1953); *Miller v. Hall*, 161 Md. 111, 155 Atl. 327 (Ct. App. 1931); *Morrissey v. Powell*, 304 Mass. 268, 23 N.E.2d 411 (1939); *Diamond v. Holstein*, 373 Mich. 74, 127 N.W.2d 896 (1964); *Keely v. Arkansas Motor Freight Lines, Inc.*, 278 S.W.2d 765 (Mo. 1955); *Remmenga v. Selk*, 152 Neb. 625, 42 N.W.2d 186 (1950); *Weiss v. Wasserman*, 91 N.H. 164, 15 A.2d 861 (1940); *Vargas v. Clauser*, 62 N.M. 405, 311 P.2d 381 (1957); *Ando v. Woodberry*, 8 N.Y.2d 165, 168 N.E.2d 520, 203 N.Y.S.2d 74 (1960); *Grant v.*

decisions on the interpretation of, and legislative intent behind, statutes⁶ which expressly disallow the admission in a civil suit of a record of conviction of a traffic violation.⁷ Pennsylvania, the other minority jurisdiction, statutorily bars the use of a plea of guilty.⁸

The majority of jurisdictions have uniformly recognized that a plea of guilty is in the nature of an admission against interest;⁹ more specifically, a judicial admission.¹⁰ This is easily justified, since a plea of guilty is an admission of a wrong on the part of the defendant.¹¹ This case serves as an excellent example of this doctrine. The defendant was charged with the crime of "driving his motor vehicle at a speed greater

Shadrick, 260 N.C. 674, 133 S.E.2d 457 (1963); *Heid v. Shafer*, 140 N.W.2d 584 (N.D. 1966); *Clinger v. Duncan*, 166 Ohio St. 216, 141 N.E.2d 156 (1957); *Zumwalt v. Moran*, 260 P.2d 725 (Okla. 1953); *Hazard v. Salles*, 222 Ore. 559, 353 P.2d 548 (1960); *Green v. Boney*, 233 S.C. 49, 103 S.E.2d 732 (1958); *Berlin v. Berens*, 76 S.D. 429, 80 N.W.2d 79 (1956); *Darrow v. Texas Dep't of Public Safety*, 392 S.W.2d 785 (Tex. Civ. App. 1965); *Russ v. Good*, 92 Vt. 202, 102 Atl. 481 (1917); *Reynolds v. Donoho*, 39 Wash. 2d 451, 236 P.2d 552 (1951); *Moore v. Skyline Cab, Inc.*, 134 W. Va. 121, 59 S.E.2d 347 (1950); *Gaspord v. Hecht*, 13 Wis. 2d 83, 108 N.W.2d 137 (1961).

6. COLO. REV. STAT. ch. 13, art. 2, § 13-5-137 (1953); IDAHO CODE, tit. 49, § 49-1119 (1953); MINN. STAT. § 169-94 subd. 1 (1940); UTAH CODE, tit. 41, § 41-6-170 (1953). Most of these statutes parallel the Utah Statute:

No record of the conviction of any person for any violation of this act [Motor Vehicle Act] shall be admissible as evidence in any court in any civil action.

7. *Ripple v. Brack*, 132 Colo. 125, 286 P.2d 625 (1955); *Jones v. Talbot*, 87 Idaho 498, 394 P.2d 316 (1964); *Warren v. Marsh*, 215 Minn. 615, 11 N.W.2d 528 (1943); *Utah Farm Bureau Ins. Co. v. Chugg*, 3 Utah 2d 399, 315 P.2d 277 (1957). Apparently Minnesota will adhere to the majority rule in cases not involving traffic violations. *Kvanli v. Village of Watson*, 139 N.W.2d 275 (Minn. 1965).

8. PA. STAT., ANNOT., tit. 75, § 1211 (1959):

A plea of guilty . . . in any summary proceedings before a magistrate shall be inadmissible as evidence in every civil proceeding arising out of the same violations or under the same facts or circumstances.

Pennsylvania presumably adheres to the same traffic-nontraffic dichotomy as Minnesota: *Tucker v. Standard Brand Distributors*, 108 Pitts. Leg. J. N.S. 462 (1960).

9. Dean Wigmore has asserted:

The law of Evidence has suffered, in its most vital parts, from an ailment almost incurable—that of confusion of nomenclature. 4 WIGMORE, EVIDENCE § 1058, p. 20 (3d ed. 1940).

In order that we may be immune from this ailment, the following definitions will be useful:

An admission is the voluntary acknowledgement by a party of the existence of the truth of certain facts.

Roosevelt v. Smith, 17 Misc. 323, 325, 40 N.Y.S. 381, 383 (N.Y. City Ct. 1896); BLACK, LAW DICTIONARY (4th ed. 1951).

An admission against interest is any statement of a party inconsistent with his claim in an action.

Hoeffner v. Western Leather Clothing Co., 161 S.W.2d 722 (Mo. Ct. App. 1942).

10. A judicial admission, as opposed to an extra-judicial admission, is one made by a party, of a material fact, appearing of record in the proceedings of a court. *Marron v. Helmeke*, 100 Colo. 364, 67 P.2d 1034 (1937).

Dean Wigmore would use a dichotomy founded not on the location of the admission, but rather on the legal use of it. Thus, he uses the term judicial admission to denote an admission done in the course of the proceedings, which is a waiver of the production of evidence. In other words, one which concedes that the proposition of fact alleged by the opponent is true. An admission which is used as a proof, and is an item in the mass of evidence, is labeled a quasi-admission. 4 WIGMORE, EVIDENCE § 1058 (3d ed. 1940).

11. *Konshuk v. Hayes*, 150 Wash. 565, 273 Pac. 957 (1929).

than was reasonable or prudent under the conditions¹² and having regard to the actual and potential hazards then existing."¹³ To this charge, he pleaded guilty. It is apparent that, in so doing, he was voluntarily acknowledging the existence of the truth of certain facts, *i.e.*, the fact that he was driving too fast for the conditions. Inasmuch as his speed was an issue in the civil suit,¹⁴ this avowal (of driving too fast for conditions) was certainly inconsistent with his claim that he was not speeding. Thus, clearly fitting the definition of an admission against interest,¹⁵ this plea of guilty should have been admissible under that theory.¹⁶

However, it has been established unquestionably, in Florida, that evidence of a criminal conviction is, except for impeachment purposes, inadmissible in a civil suit,¹⁷ and it cannot be disputed that "a plea of guilty is as much a conviction as a verdict and judgment to that effect."¹⁸ All that remains to be done is the formal adjudication and sentencing. It is on this supposition that most of the states with statutes barring the admission of traffic convictions in civil suits have held that the plea of guilty to the traffic conviction is also inadmissible.¹⁹ Thus, viewing the plea of guilty as tantamount to a conviction, undoubtedly, it is inadmissible in Florida.²⁰

Dean Wigmore has set forth what has been referred to by one writer,²¹ as the "limited purpose" rule:

[W]hen an evidentiary fact is offered for one purpose and becomes admissible by satisfying all the rules applicable to it in that capacity, it is not inadmissible because it does not satisfy the rules applicable to it in some other capacity. . . .²²

The normal practice, when faced with the situation suggested by Wigmore, is to admit the evidence and instruct the jury that they are to consider the evidence only in the capacity in which it is admissible.²³ However, as with any other rule, there are exceptions. If there is a great risk of confusion, or the policy behind refusing its admission is strong, the judge in his discretion may bar the evidence.²⁴

12. The conditions at the time of the accident, approximately 7:00 P.M., were dark and raining. Petitioners Brief on Jurisdiction, p. 2.

13. *Id.* at 3.

14. *World Wide Rent-A-Car v. Boshnack*, *supra* note 1.

15. *Supra* note 9.

16. *Robinson v. Pepper*, 94 Fla. 1184, 116 So. 4 (1928).

17. *Stevens v. Duke*, *supra* note 2.

18. *Utah Farm Bureau Ins. Co. v. Chugg*, 7 Utah 2d 399, 404, 315 P.2d 277, 280 (1957).

19. See cases *supra* note 7; *contra*, *Book v. Datema*, 256 Iowa 1130, 131 N.W.2d 470 (1964). These statutes apparently reflect a strong public policy opposed to its admission under any theory. See text following note 20, *infra*.

20. *Stevens v. Duke*, *supra* note 2.

21. 16 Note, *SYRACUSE L. REV.* 81 (1964).

22. 1 WIGMORE, *EVIDENCE* § 13, at p. 300 (3d ed. 1940).

23. *McCORMICK*, *EVIDENCE* § 59 (1954).

24. *Ibid.*

It is apparent from this discussion, that the plea of guilty fits into this "limited purpose" definition, *i.e.*, it is admissible as an admission against interest, yet inadmissible on the basis that it would amount to introducing a criminal conviction.

Prior to 1843 in England, the development of the exclusionary rule had a very practical rationale. At that time, a witness could not testify in his own behalf in a civil suit. If a party could introduce a criminal conviction resulting from proceedings in which, likely as not, he had testified, then, in effect, he was testifying in the civil suit. To avoid this result the criminal conviction was held inadmissible to prove anything other than its own rendition.²⁵ Although the Evidence Act of 1843 removed this interest disqualification, the courts still adhered to the exclusionary rule.²⁶ These decisions were based on the maxim *res inter alios acta alteri nocere non debet*.²⁷ It was not until 1911 that an English court realized the misuse of this principle²⁸ and rejected the exclusionary rule.²⁹ However, this period of enlightenment was short lived because in 1943 England reverted to the exclusionary rule.³⁰

The exclusionary rule followed a similar course in its development in the United States. Beginning at an early stage in our legal history,³¹ it remained a hard and steadfast rule and, for the most part, went unchallenged³² until the early part of this century.

In 1927, the traditional rule was rejected in *Eagle, Star & British Dominion Ins. Co. v. Heller*.³³ There, the plaintiff after having been convicted of arson sued his fire insurance carrier to recover on his policy. The insurance company was allowed to introduce his conviction as evidence, and on appeal the Virginia Supreme Court held that the judgment of conviction was *conclusive* evidence of the arson. The court stated that

25. *Gibson v. M'Carthy*, Cast. Hard. 311, 95 Eng. Rep. 202 (K.B. 1736); *Rex v. Warden of the Fleet*, Holt 133, 90 Eng. Rep. 972 (K.B. 1699).

26. *Leyman v. Latimer*, 47 L.J. 470 (Q.B. 1878); *Yates v. Kyffin-Taylor*, [1899] Weekly N. 141.

27. A transaction between two parties ought not to operate to the disadvantage of a third. BROOM, *LEGAL MAXIMS* (7th ed. 1874).

28. The courts in citing and using this doctrine apparently fail to recognize that the use of the transaction (the criminal proceeding) by the third party is to his advantage rather than disadvantage. As a result, there were decisions which one finds difficult to rationalize. For example, in *Yates v. Kyffin-Taylor*, *supra* note 25, the beneficiary killed the testator and was convicted of her murder. The testator's next-of-kin in this action was petitioning to have the beneficiary's interest forfeited (based on the maxim that one should not be allowed to profit from his wrongdoing) and sought to use, as evidence, the murder conviction. The court held that the conviction was inadmissible as proof that the beneficiary committed the murder and the petitioner would have to prove this fact anew.

29. *In Re Crippen*, [1911] p. 108.

30. *Hollington v. F. Hewthorn & Co.*, [1943] 1 K.B. 587.

31. *Quinn v. Quinn*, 16 Vt. 425 (1844).

32. Annot., 31 A.L.R. 261 (1924).

33. 149 Va. 82, 140 S.E. 314 (1927).

To permit a recovery under a policy of fire insurance by one who had been convicted of burning the property insured would be to disregard the contract, be illogical, would discredit the administration of justice, defy public policy, shock the most unenlightened conscience.³⁴

Although this case has not been followed to its fullest extent, *i.e.*, holding the criminal conviction as conclusive, it has been a starting point for a growing minority of states which allow admission of the criminal conviction as *prima facie* evidence of the facts involved in the criminal case.³⁵ Thus a trend is apparently developing, at least to the extent that one writer has said: "by and large, the rule [exclusionary] seems to be on its way out. . . ."³⁶ This trend was recognized by the American Law Institute and codified in the Model Code of Evidence.³⁷

The courts which adhere to the traditional rule rationalize their decisions on various grounds. Some courts have relied on the hearsay rule to exclude the conviction.³⁸ Technically, the record of the conviction does fall within the usual hearsay definition inasmuch as it is offered to show the truth of the matters alleged, and derives its probative value partially from the credibility and capacity of the out-of-court asserter.³⁹ However, it is submitted that the substance of this objection is more technical than real. Certainly, the official record is sufficiently trustworthy evidence of the court's findings of fact and it must be remembered that the litigant had every opportunity to cross-examine the witnesses upon whose testimony the conviction was based. Furthermore, it seems derogatory to our entire system of justice to characterize as mere hearsay the decision of a court and jury by which an accused may have been fined and imprisoned, or even executed.

Another argument asserted in favor of exclusion is the mutuality idea, which is partially derived from the *res inter alios*⁴⁰ concept. Basically, the reasoning is:

No party is, as a general rule, bound in a subsequent proceeding by a judgment, unless the adverse party now seeking to

34. *Id.* at 111, 140 S.E., at 323.

35. See, *e.g.*, *New York & Cuba Mail S.S. Co. v. Continental Ins. Co.*, 117 F.2d 404 (2d Cir. 1941); *Page v. Skinner*, 220 Ala. 302, 125 So. 36 (1929); *Schindler v. Royal Ins. Co.*, 258 N.Y. 310, 179 N.E. 711 (1932); *Annot.*, 18 A.L.R.2d 1287 (1951).

36. Note, 39 VA. L. REV. 995, 998 (1953).

37. MODEL CODE OF EVIDENCE rule 521 (1942).

Evidence of a subsisting judgment adjudging a person guilty of a crime or misdemeanor is admissible as tending to prove the facts recited therein and every fact essential to sustain the judgment.

38. *E.g.*, *Manning v. Watson*, 108 Cal. App. 2d 662, 239 P.2d 693 (Ct. App. 1952); Note, 27 ILL. L. REV. 195 (1932).

39. McCORMICK, EVIDENCE § 225 (1954).

40. *Supra* note 26.

41. 1 FREEMAN, JUDGMENTS § 428, at p. 929 (5th ed. 1925).

secure the benefit of the former adjudication would have been prejudiced by it had it been determined the other way.⁴¹

While this reasoning has appeal in an equitable or fair-play context, it loses this appeal when the question is merely one of admission of the conviction. The idea is that one is not *bound* by a prior judgment which he could not have used advantageously. However, this should not be interpreted to mean that it cannot be *admitted* at least as prima facie evidence rather than as the basis of an estoppel. Under these circumstances, the party against whom it is offered could always deny the validity of its underlying facts and contest them with evidence of his own.⁴²

A third view, and one which Florida has utilized⁴³ to reach the result of exclusion is very general, and probably the weakest justification for exclusion. This view is that the objects and procedures are different in a criminal trial than in a civil suit.⁴⁴ A cursory examination of this argument reflects its fallacy, and in fact one could advance this very same argument as a reason in favor of admission. As for the differences in procedures, an accused in a criminal action is better protected than the defendant in a civil suit. He must be proven guilty beyond a reasonable doubt, statutes are construed in his favor, and he may refuse to testify, without prejudice. Since the burden of proof is *greater* in a criminal action than in a civil suit, the fact that the defendant's guilt has been established beyond a reasonable doubt would seem to be a good argument for admission, rather than for exclusion.

It is obvious that the argument is that no matter what theory is used, there is little validity in the rationale of exclusion. Therefore, this policy being a weak one, there is no reason why a plea of guilty should not be admitted, at least in its capacity as an admission against interest. However, there is another argument which would separate this rule into traffic and non-traffic criminal offenses.⁴⁵ The basis of this argument is that, in most cases, a plea of guilty to a traffic violation is not an admission so much as a convenience. The defendant may be from out of town or a businessman who does not have the time to spend in a traffic court. The easiest and most convenient thing to do is plead guilty and pay the fine. It was this view that led various states to enact statutes barring the use of a traffic conviction in a civil suit.⁴⁶

While there is some merit to this argument, it must be noted that the circumstances surrounding the plea of guilty are such that they do

42. Note, 64 MICH. L. REV. 702 (1966).

43. Eggers v. Phillips Hardware Co., 88 So.2d 507 (Fla. 1956); Stevens v. Duke 42 So.2d 361 (Fla. 1949).

44. Interstate Dry Goods Stores v. Williamson, 91 W. Va. 156, 112 S.E. 301 (1922).

45. See, e.g., Ando v. Woodberry, 8 N.Y.2d 165, 168 N.E.2d 520, 203 N.Y.S.2d 74 (1960) (dissenting opinion); Note, 51 IOWA L. REV. 212 (1965)

46. *Supra* note 6.

not go to the question of admission, but rather to the weight of the evidence.⁴⁷ The defendant has an opportunity to explain why he pleaded guilty,⁴⁸ and to possibly neutralize the use of the plea.

The proper rule, therefore, appears to be to allow the introduction of the plea, with the judge having discretion to bar it if he is of the opinion that its introduction, even as tempered by the adverse party's explanation, would result in irreversible prejudice to the opponent.

JACK R. BLUMENFELD

THE AUTOMOBILE DANGEROUS INSTRUMENTALITY DOCTRINE: THE SCOPE OF CONSENT

The plaintiffs were awarded a money judgment against the defendant-dealer and others for injuries and damages received in an automobile collision. The automobile was owned by the defendant-dealer and was being driven by one of the co-defendants after he stole it, at the time of the accident. On appeal to the First District Court of Appeal, *held*, affirmed: A defendant-dealer is vicariously liable to third persons for the negligence of his permittee under Florida's application of the dangerous instrumentality doctrine to automobiles. Liability is placed on a defendant-dealer who consents to the use of its automobile for a "trial spin" even though the prospective purchaser takes the automobile with intent to steal it.¹ *Tillman Chevrolet Co. v. Moore*, 175 So.2d 794 (Fla. 1st Dist. 1965).²

A variety of doctrines have been formulated to impose financial responsibility upon owners who allow others to use their vehicles. Under common law theories, liability cannot be placed upon an owner merely because he has legal title to an automobile involved in a negligence action.³ However, there are many situations when an owner is liable for damages and injuries resulting from an accident involving his automobile. The owner⁴ who entrusts his vehicle to an incompetent is liable

47. 4 WIGMORE, EVIDENCE § 1059 (3d ed. 1940).

48. *Ibid.*

1. The "prospective purchaser" allowed the defendant-hitchhiker to drive and he negligently injured the plaintiffs. It is clear from the opinion that the defendant-dealer would have been liable even if the "prospective purchaser" had caused the accident.

2. A writ of certiorari taken from the appellate court decision was discharged on the grounds that there was no conflict among the jurisdictions. *Tillman Chevrolet Co. v. Moore*, 184 So.2d 175 (Fla. 1966).

3. 6 BLASHFIELD, AUTOMOBILE LAW & PRACTICE § 254.4 (3d ed. 1966). In particular see the cases cited in n.36.

4. Generally *ownership* as referred herein does not only mean the *legal title* holder, but also includes those who lawfully possess or control.