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Criminal Law--Admissibility on Criminal Courts of Evidence Derived from Inadmissible Juvenile Confessions

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and so long as he has no responsibility to the employer, association, or union. 2 W. VA. BAR NEWS 161, 166 (1963).

Although the balance of interests in the instant case was resolved in favor of constitutional rights, the courts should be quick to note that a myriad of unsolved problems may now have been engendered because of the general relaxation in the application of the *Canons of Professional Ethics* to the union program. Will divergent interests between organization and members create a risk that the attorney might digress from the undivided pursuit of his client's interests? Will the nature of a case result in the selection of clients whose claims afford the organization an opportunity to retain the confidence of its members through extraordinary recoveries? Will the decision in the instant case necessitate federal legislation? The problems now created can only be solved through sober recognition of a new pattern developed by the court in this liminal area of attorney-client relationships—a pattern based on an extension of constitutional guarantees modifying the previously accepted application of the *Canons of Professional Ethics.* As the law must meet the needs of the people, so must the molds be reshaped accordingly to reestablish a standard of conduct comportable to the legal profession and the well-being of society.

Frank Cuomo, Jr.

Criminal Law—Admissibility in Criminal Courts of Evidence Derived from Inadmissible Juvenile Confessions

D was one of two juveniles convicted of robbery by a jury in a federal district court following waiver of juvenile court jurisdiction. On appeal, *D* objected to testimony of a third juvenile who confessed participation in the robbery. *D* claimed this witness's identity was discovered as a result of a confession obtained from one of the *Ds* while in the custody of the juvenile court. *Held,* conviction affirmed. The rule forbidding the use of the confessions or admissions obtained from the accused while detained under juvenile court jurisdiction is intended to preserve the fundamental fairness to the juvenile, not to deter improper police conduct. The relationship between the inadmissible confession and the testimony of the witness was so slight that there was no reason for excluding it. *Edwards v. United States,* 330 F.2d 849 (D.C. Cir. 1964).

The objective of juvenile court programs in every state is remedial and to a degree preventive, rather than punitive. Some authorities have maintained that "the juvenile court is not a court at all, but a kind of hospital for children afflicted with the disease of delinquency." Nunberg, *Problems in the Structure of the Juvenile Court,* 48 J. CRIM. L., C. & P.S. 500 (1958). Nevertheless, youths subjected to the jurisdiction of juvenile courts for having committed certain grave acts may be vulnerable to subsequent criminal prosecution for the same acts. Legislation in many states authorizes juvenile courts having jurisdiction over the age group astride the line between child and adult to waive that jurisdiction and transfer to the criminal court those offenders who are not amendable to rehabilitation. The possibility of subsequent criminal prosecution raises the question of whether information, stemming directly or indirectly from a confession made by a youth while subject to the juvenile process, may be introduced as evidence in later criminal proceedings.

In *Harling v. United States,* 295 F.2d 161 (D.C. Cir. 1961), the court held that confessions obtained within the juvenile system were inadmissible in subsequent criminal proceedings. The court reasoned that subsequent criminal use of such confessions would impair the *parens patriae* function of the juvenile court and would be fundamentally unfair to the youth. The holding in the principal case reaffirms several other decisions which apparently place a limitation on the rule in the *Harling* case. Although the court followed *Harling* in disallowing the confessions of the juvenile *Ds,* it allowed testimony of an eyewitness whose identity was revealed in the excluded confession. In essence, the court deemed inapplicable the "fruit of the poisonous tree" doctrine of *Nardone v. United States,* 308 U.S. 338 (1939). Answering *D's* claim that the testimony of the eyewitness was the "fruit" of the inadmissible confession, the court in the principal case held that there was not a sufficient relationship between the inadmissible confession and the "fruit" testimony of the eyewitness to warrant exclusion of the testimony.

The fact situation in *Smith v. United States,* 324 F.2d 879 (D.C. Cir. 1963) closely resembles that of the principal case. However, in *Smith* the police learned of the existence and identity of such an eyewitness from *Ds* during a period of illegal detention. The trial court admitted the testimony of the eyewitness. The court of appeals affirmed this ruling, explaining that such disclosure of a

potential witness "is of no evidentiary significance, per se, since the living witness is an individual human personality . . ." The reasoning seems to be that since human faculties operate in deciding what evidence the witness will give of his own volition, his decision is an intervening act which dissipates the taint of original illegality. The court added that the testimony of a living witness is not to be mechanically equated with the production of inanimate evidentiary objects illegally seized. By way of *dictum,* the court suggested that such inanimate evidence would be inadmissible as "fruit of the poisonous tree."

However, a dissenting judge would have disallowed the evidence of the eyewitness. He found no such attenuation between the inadmissible confession and its fruit, the testimony of the eyewitness. The rationale underlying this view is that there is no meaningful distinction between animate and inanimate evidence emanating from the inadmissible confession. The majority distinquished the two types of fruit on the basis of the voluntary decision the eyewitness must make to testify. However, as the dissent points out, this same voluntary choice must be exercised when an individual personality decides to give police officers inanimate evidence, such as narcotics, the existence of which was disclosed in the inadmissible confession. Thus the dissent felt that the decision to give certain evidence was not the kind of intervening voluntary act of an individual personality that should dissipate the taint of original illegality. The court in the principal case relied on the majority opinion in the *Smith* case, as did the court in *McLindon v. United States,* 329 F.2d 238 (D.C. Cir. 1964).

Although the West Virginia court has not ruled in this area, it is clear that a juvenile may face criminal prosecution after being subjected to the jurisdiction of the juvenile court. W. VA. CODE ch. 49, art. 5, § 3 (Michie 1961) provides that "[I]f the child be over sixteen years of age at the time of the commission of the offense . . . the [juvenile] court may enter an order showing its refusal to take jurisdiction and permit the child to be proceeded against . . ." in an adult criminal court. In *State ex rel. Hinkle v. Skeen,* 138 W. Va. 116, 75 S.E.2d 223 (1953), the court indicated that the hearing of evidence in a juvenile court is merely for the purpose of determining whether the juvenile is delinquent. However, no West Virginia case was found which decided the question of whether evidence obtained directly or indirectly from the juven-

ile court jurisdiction could be used against him in a subsequent criminal proceeding.

This issue is likely to confront the court in the future. One observer estimates that ninety-nine per cent of the children brought to juvenile courts for delinquency admit involvement in the offense in question. Alexander, *Constitution Rights in Juvenile Court*, 46 A.B.A.J. 1206 (1960). Another writer has pointed out that the American Law Institute's Youth Correction Authority Act, as yet unaccepted in West Virginia, would extend the age of legal infancy to twenty-one, thus providing a wider latitude for the issue to be raised. LUDWIG, YOUTH AND THE LAW 85 (1955).

If juvenile proceedings are made to serve as an adjunct to and a part of the adult process, the non-criminal philosophy which underlies the juvenile court system will be destroyed. It is clear that any position the West Virginia court may take on the rule in the principal case should be made in view of the necessity of sufficiently preserving the basic insulation between juvenile and criminal proceedings.

The development of the relationship between the juvenile court confession and the subsequent "fruit" evidence in adult criminal proceedings affords a parallel to the rise of the limitation on the admission of confessions and their fruits in normal criminal proceedings. During the period of the Court of the Star Chamber any confession, regardless of how extracted from the accused, was admissible. However, a common law test evolved whereby confessions were not admissible if given under circumstances that would make them unreliable. 2 WHARTON, CRIMINAL EVIDENCE § 358 (12th ed. 1955). The test of reliability obviously did not apply to evidence procured as a result of this confession—coerced or not—and such evidence was always admitted.

However, in *Stein v. New York*, 346 U.S. 156 (1953), the Supreme Court of the United States applied a second test of due process as a supplement to the common law reliability test. By the due process test, a conviction will be reversed where the confession was obtained by methods which themselves offend due process; here no inquiry into reliability is relevant. The purpose of this standard is to protect the accused against brutal police tactics.

If an involuntary confession is to be excluded, what about other evidence disclosed by the involuntary confession? The Supreme

Court has not ruled. Many states, including West Virginia, have held that information ascertained through an inadmissible confession is admissible because of its reliability as evidence. *Watts v. State,* 229 Ind. 80, 95 N.E.2d 570 (1950); *State v. Douglass,* 20 W. Va. 770 (1882). But the reliability test for admitting evidence uncovered by coercing the accused no longer stands alone. This resulted when the Supreme Court made it clear that coerced confessions could be excluded from evidence because of a violation of the due process requirement as well as lack of reliability. Paulsen, *The Fourteenth Amendment and the Third Degree,* 6 STAN. L. REV. 411, 429 (1954).

Two state courts recently ruled on the admissibility of fruit evidence. In *People V. Robinson,* 13 N.Y.2d 296, 196 N.E.2d 261, 224 N.Y.S.2d 705 (1962), the court ruled that where an illegally obtained statement is excluded, evidence found as a result of that statement must also be banned. Similarly, the California court has stated, by *dictum,* that real evidence discovered as a result of a coerced confession is inadmissible. *People v. Ditson,* 57 Cal. 2d 415, 369 P.2d 714 (1962).

The inadmissibility of such evidence is consistent with Supreme Court holdings requiring exclusion of reliable evidence uncovered by the use of improper police methods. As a violation of due process, narcotics capsules forcibly pumped from the defendant's stomach were held inadmissible in state courts, *Rochin v. California,* 342 U.S. 165 (1952), and the bar on evidence obtained by illegal search and seizure has been extended to the states, *Mapp v. Ohio,* 367 U.S. 643 (1961).

With the emergence of the due process test in coerced confession cases, the admissiblity of the fruits of inadmissible confessions becomes questionable. By the reliability test, a coerced confession was inadmissible because of its untrustworthiness, but the fruit of that confession obviously was trustworthy and thus admissible. However, when the due process test is applied, evidence discovered as a result of the inadmissible confession may become "fruit of the poisonous tree". It would seem that animate or inanimate evidence which directly stems from the inadmissible confession would be just as tainted as the confession and thus inadmissible.

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