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CRIMINAL LAW-CONFESSIONS AND DUE PROCESS

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CRIMINAL LAW—CONFESSIONS AND DUE PROCESS—Petitioner was arrested on suspicion of robbery and the next day confessed the theft of a car owned by a person who had been found dead a month previous. On the following evening, after a four and one-half hour "interview" with two F.B.I. agents, he "broke down and confessed the killing."[1] Other confessions were made the next day and finally, after a detention of five days from the day of arrest, petitioner was taken before a committing magistrate. He was found guilty of murder at a trial in which these confessions were used against him. He sued out a writ of habeas corpus alleging that use of the confessions as evidence was a denial of due process of law[2] contrary to the Fourteenth Amendment because he was not promptly taken before a committing magistrate as required by law,[3] he was held without advice of counsel, family, or friends, and the confessions were not voluntary. *Held,* writ quashed. The confessions were made before the unnecessary detention; the fact that a confession is made without advice of counsel, family, or friends does not render its use a denial of due process, and the confessions in fact were voluntary. *Mares v. Hill,* (Utah 1950) 222 P. (2d) 811.

The scope of this note is limited to a discussion of the conditions which render a confession inadmissible as evidence under the Fourteenth Amendment. Consistently the Supreme Court has required that confessions be "voluntary."[4] This accords with the general rule of evidence which considers an "involuntary" confession to be testimonially untrustworthy and therefore inadmissible.[5] This rule was first applied in 1936 when the Supreme Court declared that a conviction resting solely upon confessions shown to have been extorted by officers of the state by brutality and violence is void as a denial of due process of law guaranteed by the Fourteenth Amendment.[6] Four years later the meaning of "involuntary" was extended to include psychological coercion in a decision which rejected a confession obtained by repeated interrogation of the prisoner who was denied comfort of family and benefit of counsel under circumstances calculated to inspire terror.[7] In 1949 three state court convictions were reversed because confessions which were the result of a "suction process"[8] were admitted in evi-

[1] Mares v. Hill, (Utah 1950) 222 P. (2d) 811 at 813.

[2] ". . . nor shall any state deprive any person of life, liberty, or property, without due process of law. . . ." U.S. Const. Amend. XIV, §1.

[3] Utah Code Ann. (1943) §105-13-17.

[4] Brown v. Mississippi, 297 U.S. 278, 56 S.Ct. 461 (1936); Chambers v. Florida, 309 U.S. 227, 60 S.Ct. 472 (1940); Malinski v. New York, 324 U.S. 401, 65 S.Ct. 781 (1945); Lisenba v. California, 314 U.S. 219, 62 S.Ct. 280 (1941), rehearing den. 315 U.S. 826, 62 S.Ct. 620 (1942).

Voluntary is used in the sense of freedom of choice. "All conscious verbal utterances are and must be voluntary; and that which may impel us to distrust one is not the circumstance that it is involuntary, but the circumstance that the choice of false confession is a natural one under the conditions." 3 WIGMORE, EVIDENCE §824 (1940).

[5] 3 WIGMORE, EVIDENCE §§822 and 826 (1940).

[6] Brown v. Mississippi, 297 U.S. 278, 56 S.Ct. 461 (1936).

[7] Chambers v. Florida, 309 U.S. 227, 60 S.Ct. 472 (1940). The Supreme Court may also look behind a finding by a state court and jury that the confession was voluntary, pp. 228-9.

[8] This term appears to mean a process which induces the suspect to confess because

dence.[9] It would seem clear that the mere unlawful detention[10] of a suspect coupled with any questioning by a person in authority renders a confession to some degree coerced.[11] At the present time, however, there does not seem to be any inclination on the part of a majority of the Supreme Court to hold this type of confession inadmissible in state trials;[12] nor should there be, as a matter of evidence theory, since a confession may be trustworthy even though induced by some coercion.[13] However, rules for the exclusion of evidence can be based upon considerations other than trustworthiness.[14] If exclusion will secure prompt arraignment of suspects and prevent abuses by police officers,[15] it might be desirable for state legislatures[16] to adopt such a rule[17] after a full examination of the probable effect on efficient law enforcement.[18] In the instant case the court seems to limit the "voluntary" test to physical discomfort or sustained interrogation and to treat unlawful detention as a possible additional ground for exclu-

overborne from physical or mental ordeal under the particular complex of conditions. It very possibly is not an extension of prior tests of coercion.

[9] Watts v. Indiana, 338 U.S. 49, 69 S.Ct. 1347 (1949); Turner v. Pennsylvania, 338 U.S. 62, 69 S.Ct. 1352 (1949); Harris v. South Carolina, 338 U.S. 68, 69 S.Ct. 1354 (1949). See 25 IND. L.J. 76 (1949); 1 SYRACUSE L. REV. 313 (1950); 25 NOTRE DAME LAWYER 164 (1949).

[10] Detention without having taken a suspect before a magistrate promptly.

[11] Justice Douglas appears to hold detention is per se coercive in Watts v. Indiana, 338 U.S. 49, 69 S.Ct. 1347 (1949), where he says at 57, "Detention without arraignment is a time-honored method for keeping an accused under the exclusive control of the police. They can operate at their leisure. The accused is wholly at their mercy. He is without the aid of counsel or friends; and he is denied the protection of the magistrate. We should unequivocally condemn the procedure and stand ready to outlaw . . . any confession obtained during the period of the unlawful detention. The procedure breeds coerced confessions. It is the root of the evil. It is the procedure without which the inquisition could not flourish in the country."

Compare the dissenting opinion of Justice Reed in Upshaw v. United States, 335 U.S. 410 at 414, 69 S.Ct. 170 (1948).

[12] The federal cases, McNabb v. United States, 318 U.S. 332, 63 S.Ct. 577 (1943); Mitchell v. United States, 322 U.S. 65, 64 S.Ct. 896 (1944); Upshaw v. United States, 335 U.S. 410, 69 S.Ct. 170 (1948), are expressly placed on non-constitutional grounds. Exclusion is to prevent the court from becoming an instrument and party to the unlawful act. See 3 WIGMORE, EVIDENCE §851 (1949 Supp.) for a collection of recent state cases; see also 2 OKLA. L. REV. 337 (1949).

[13] Lisenba v. California, 314 U.S. 219, 62 S.Ct. 280 (1941), rehearing den. 315 U.S. 826, 62 S.Ct. 620 (1942). See 3 WIGMORE, EVIDENCE §825 (1940). It must be borne in mind that a detention may be so long as to make a confession untrustworthy.

[14] For example, privileged communications. See 8 WIGMORE, EVIDENCE §§2285 and 2286 (1940).

[15] See 11 NATIONAL COMMISSION ON LAW OBSERVANCE AND ENFORCEMENT, REPORT ON LAWLESSNESS IN LAW ENFORCEMENT (1931); also 48 MICH. L. REV. 1028 (1950).

[16] 15 BROOKLYN L. REV. 51 (1948).

[17] The better authority opposes entire exclusion of confessions as a remedy for enforcement evils. See 3 WIGMORE, EVIDENCE 319-20 (1940); 42 MICH. L. REV. 679 (1944); 42 MICH. L. REV. 909 (1944).

[18] 42 MICH. L. REV. 679 (1944); 42 MICH. L. REV. 909 (1944), especially examples at 912 et seq. See 3 WIGMORE, EVIDENCE §§844-847 (1940) for present English Rule.

sion. This separation seems unwarranted.[19] Rather, all three factors should be considered as affecting trustworthiness. Exclusion of trustworthy confessions should be left to legislative command.

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[19] Federal courts must distinguish since McNabb v. United States, 318 U.S. 332, 63 S.Ct. 577 (1943), requires exclusion even when detention has not affected the trustworthy nature of the confession.