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# Evidence - Admissibility of Confessions

John Getreu

While the accused was away at work, a dog brought the head of a baby to the barn on his property. The coroner examined the head and reported that it had belonged to a normal baby that had met its death a week to ten days after birth and that the head had been severed with a sharp instrument. The following day the police searched for the body of the baby, and the next day the sheriff took the two oldest daughters of the accused to Staunton. The accused followed them to the Commonwealth's Attorney's office where he was arrested and placed in jail without a warrant. He was told that he was being held as a material witness on suspicion of murder. He was twice questioned at this time but maintained that he had been unaware of his oldest daughter's pregnancy or that she had given birth to a child, although she had lived in the same small house with him, his wife, and four of his six children. He was detained from February 24th to March 1st without any warrant, at which time he was taken to his home, where the sheriff, the Commonwealth's Attorney, two deputy sheriffs, and a member of the state police held his wife in custody. After arrival, the accused was taken out with the officers to search again for the body of the baby. The accused claimed that he was threatened and was told, while the officers were searching, that it would be better for him to admit commission of the crime. The officers then brought him into the house and told him that his wife had described how the baby had been killed, whereupon the accused was said to have admitted orally his part in the crime and re-enacted it. Later, on the return trip to jail, he was said to have reaffirmed spontaneously the truth of his oral confession. After his return, a warrant charging him with murder was finally served on him, while he was in custody. On March 2nd he signed a confession to the effect that he and his wife had jointly murdered the infant seven days after it was born. He stated that the baby had been born on February 6th in the evening, with only his wife in attendance, and that he had seen it the following morning. He further stated that he had held the baby face-up on a chopping block while his wife cut its head off with an axe, but that she had buried it and that he did not know where the body was. The accused was convicted of second degree murder, in the Circuit Court of Augusta County, Virginia; on appeal, *held,* conviction affirmed. *Campbell* v. *Commonwealth,* 194 Va. 825, 75 S.E.2d 458 (1953).

A question raised by the assignments of error was whether the trial court erred in admitting the oral confessions and the later written one. In Virginia, the law is as follows: Admissibility of a confession is a question for the trial court to determine, rather than the jury.[1] The trial court, through the evidence offered by the Commonwealth, must find the confession to be voluntary before admitting it in evidence;[2] that is, the confession must not have been extorted through fear.[3] In such cases the trial court has wide discretion, and on appeal its ruling will be given equal weight with a fact found by the jury.[4] The ruling is not usually disturbed on review unless a clear abuse of discretion can be shown.[5]

The defense claimed that due process had been violated, in that the accused had been held five days before being charged with a crime and eighteen days before being given a preliminary hearing; and further, that during most of this time, he had been held in what amounted to solitary confinement. The defense relied on a Virginia case[6] interpreting Section 52-21[7] of the Code, to show that the defendant was held in violation of the law and that a conviction resulting from such action violated due process of law. The court admitted the illegality of the arrest and said that it did not condone such practice. However, in effect it then proceeded to do just that, by accepting the fruits of the illegal detention in the form of the one written confession and the two alleged oral confessions, all of which had been obtained from the illiterate defendant prior to arraignment.

The court, in considering the testimony of the officers of the Commonwealth, was aware of the presumption at law in favor of the superior credibility of an officer's testimony as opposed to that of the accused, in the absence of other witnesses. In this case, the judge may have given the presumption its proper evaluation in considering the question of the voluntary or involuntary nature of the confessions, but, as the defense pointed out, the federal courts, considering like situations, have adopted a different approach. Rule

1. *E.g.* Early v. Commonwealth, 86 Va. 921, 11 S.E. 795 (1890).
2. Omohundro v. Commonwealth, 138 Va. 854, 121 S.E. 908 (1924); Upshur v. Commonwealth, 170 Va. 649, 197 S.E. 435 (1938).
3. Johnson v. Commonwealth, 184 Va. 466, 35 S.E.2d 770 (1945); Macon v. Commonwealth, 187 Va. 363, 46 S.E.2d 396 (1948).
4. 7 M.J., Evidence §229 (1949).
5. Omohundro v. Commonwealth, 138 Va. 854, 121 S.E. 908 (1924).
6. Winston v. Commonwealth, 188 Va. 386, 49 S.E.2d 611 (1948).
7. Virginia Code of 1950, §52-21 ("...the officer making the arrest shall *forthwith* [Italics supplied] bring the person so arrested before an officer authorized to issue criminal warrants in the county or city where the arrest is made....If such a warrant be not issued the person so arrested shall be released.").

5(a) of the Federal Rules of Criminal Procedure reads: "An officer making an arrest under a warrant . . . shall take the arrested person without unnecessary delay before the nearest available commissioner . . . When a person [is] arrested without a warrant . . . a complaint shall be filed forthwith." In *Upshaw* v. *United States*[8] the United States Supreme Court stated that the purpose of the rule was to check resort by officers to secret interrogation of persons accused of a crime. Again in *McNabb* v. *United States*[9] the court held that a conviction resting on evidence secured through questioning of prisoners being held unlawfully before a commitment had been made was a flagrant disregard of the rules and should not be allowed to be the basis of a conviction in the federal courts. The court further stated that the purpose of requiring prompt arraignment was plain and impressively pervasive in securing the respect of a well-ordered society for its law enforcement officers and processes. In fact, it might be said that the outer limits in one direction of the question of the admissibility of confessions obtained through illegal detention permit the federal courts to reject even a voluntary confession if it is obtained while the defendant is held illegally, provided that the defendant can show that he was illegally detained.[10] On the other hand, if the court finds that the detention did not cause the confession,[11] it will be admitted in evidence.

The Supreme Court of Appeals took note of the federal government's position in the matter but observed that this rule is merely one of precedure, rather than a constitutional guaranty,[12] and therefore was not applicable to the appeal in the *Campbell* case. The court further stated that it is an experiment aimed at abolishing the opportunities for coercion that prolonged detention without a warrant is said to enhance. Virginia courts generally rely on Wigmore's general statement, on the admissibility of voluntary confessions, to the effect that the general rule is that a confession is not excluded because of any illegality in the method of obtaining it or in the speaker's position at the time of making it.[13] The court relied on this and its judicial notice that in its opinion no great degree of coercion is practiced in the state by law enforcement

8. 335 U.S. 410, 69 Sup.Ct. 170, 93 L.Ed. 100 (1948).
9. 318 U.S. 332, 63 Sup.Ct. 608, 87 L.Ed. 819 (1943).
10. *See* Patterson v. United States, 183 F.2d 687 (5th Cir. 1950).
11. Allen v. United States, 202 F.2d 329 (1952).
12. *See* Gallegos v. Nebraska, 342 U.S. 55, 72 Sup.Ct. 141, 96 L.Ed. 86 (1951).
13. Wigmore, *Evidence* §823 (3rd ed. 1940).

agents. This opinion seems to be implied by the wording of the decision in the *Campbell* case.

It would appear, however, that reliance on the personal ethics of law enforcement officers in avoiding coercion would provide a greater opporunity for unfair treatment of the defendant than would reliance on a provision such as Rule 5(a), especially in view of what occurred in the *Campbell* case. By such reliance, Virginia unduly places just treatment of the accused at the mercy of the individual idiosyncrasies of its law enforcement officers, in that it gives the overzealous officer encouragement in practicing illegal methods of obtaining confessions. To pursue such a course, when a statute similar to the federal rule might be passed to implement Section 52-21 of the Code, seems unwise. The greater latitude allowed enforcement officers in Virginia could give rise to a greater variation in police practices between the growing cities and industrial centers on the one hand and the rural areas on the other. This increased variation would contribute to social and economic disharmony, particularly since each trial justice has such wide discretion in accepting or rejecting confessions and condoning aberrant methods employed to obtain them. It may be that in the instant case no injustice resulted from acceptance of the confessions, in view of the opportunity to observe at first hand the conduct of the parties involved, but nevertheless the case shows how other problems, now only theoretical, could arise under the present handling of the admissibility of confessions.

John Getreu