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Criminal Law--Due Process--Coerced Confession in State Court

J. F. W. Jr.

West Virginia University College of Law

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narily must only prove three fundamental things. First, it must be proved that there was an intent to sell or dispose of goods or services. *State v. Carruthers*, 21 S.W.2d 895 (Mo. App. 1929). Secondly, the prosecution must establish that this advertisement was placed before the public in some manner. *People v. Wahl*, 39 Cal. App. 2d 771, 100 P.2d 550 (1940). Thirdly, such advertising must have contained therein an untrue or misleading statement. *People v. Byrnes*, 117 Colo. 528, 190 P.2d 584 (1948). Thus it is seen that the statute imposes absolute liability on the advertiser; yet, from the small number of convictions thereunder it appears something more is necessary.

The major reason for the small number of convictions under these statutes is the lack of an initiating agency to enforce them. Local police and other prosecuting agencies are probably unaware of the existence of such a statute, and, even if they are aware, their energies are diverted towards more profitable pursuits. A further reason may be attributed to the narrow construction given the statutes by the courts. Only when the enforcement of the statutes is assigned to some special agency or agencies and the courts begin to focus a sterner view toward deceptive advertisers will the reason for the enactment of these statutes be accomplished.

J. O. F.

CRIMINAL LAW—DUE PROCESS—COERCED CONFESSION IN STATE COURTS.—*D*, a mentally dull 19 year old Negro, was convicted of murder and sentenced to death. He had been arrested without a warrant, denied a hearing before a magistrate at which, under state law, he would be advised of his right to counsel and to remain silent, held incommunicado for more than two days, and told by the chief of police that there were thirty or forty people coming who wanted to get him. Under these circumstances *D* confessed to the murder. The confession was admitted in evidence over the objection of *D*'s counsel. The jury returned a verdict of guilty, the Supreme Court of Arkansas affirmed and *D* brought certiorari. Held, that *D*'s confession was coerced and its admission into evidence was denial of due process under U.S. CONST. amend. XIV, § 1. *Payne v. State*, 354 U.S. 930 (1958).

Whether a confession made to police officers after arrest is voluntary or coerced is ordinarily a question directed to the discretion of the trial court. *State v. Dowell*, 47 Idaho 457, 276 Pac. 39 (1929); 3

WIGMORE, EVIDENCE § 861 (3d ed. 1940). The same proposition holds true in the courts of West Virginia. *State v. Brady*, 104 W. Va. 523, 140 S.E. 546 (1927). *Accord, State v. Richards*, 101 W. Va. 136, 132 S.E. 375 (1926).

Factors to be considered by the trial court in determining the voluntariness of the confession are the conditions and circumstances surrounding the confessor. Confessions induced by fear, though not aroused by spoken threats, are nevertheless involuntary, because the fear which takes away the freedom may arise solely from the conditions and circumstances surrounding the confessor. *People v. Goldblatt*, 383 Ill. 176, 49 N.E. 2d 36 (1943); *White v. State*, 129 Miss. 182, 91 So. 903 (1922); 3 WIGMORE, EVIDENCE § 834 (3d ed. 1940). In *State v. Rogers*, 233 N.C. 390, 64 S.E.2d 572 (1951), the court held that "a confession made under circumstances that would reasonably lead the person charged to believe that it would be better to confess himself guilty of a crime he had not committed, is an involuntary confession."

As a corollary, it may be noted that, in West Virginia, the burden of proof is on the state to show facts justifying the admission of a confession. *State v. Brady, supra*.

Under the authority cited, we may inquire whether the confession in the principal case can justifiably be held as involuntary. See also, 20 AM. JUR. EVIDENCE §§ 496 *et seq.* (1939); 7 MICHEE JUR. EVIDENCE §§ 224, 229 (1949).

As to the admissibility of a confession in evidence, delay in arraignment, as in the present case, does not of itself render the confession inadmissible. *People v. Alex*, 265 N.Y. 192, 192 N.E. 289 (1934). However, under the Federal Rules of Criminal Procedure, incriminating statements solicited from the defendant during a period of unlawful detention are inadmissible. *Mallory v. United States*, 354 U.S. 449 (1957); Comment, 60 W. VA. L. REV. 195 (1958). This case can be distinguished on the basis of federal law in a federal court, not state law in a state court. The fact that officers in charge fail to inform the defendant that his confession may be used against him will not invalidate the confession. *Cahill v. People*, 111 Colo. 29, 137 P.2d 673 (1943). In *Mack v. State*, 203 Ind. 355, 180 N.E. 279 (1932), the court stated that confessions and admissions made voluntarily or under inducement other than fear produced by physical violence, threats, intimidation, or undue influence, are ad-

missible in evidence. The West Virginia law on the admissibility of a coerced confession is to the effect that a confession of a person accused of crime is inadmissible in evidence if not freely and voluntarily made. *State v. Brady, supra*. For further authority, see 20 AM. JUR. *Evidence* § 480 (1939), and 7 MICHIE JUR. *Evidence* § 230 (1949).

Turning next to the constitutional question involved, the Texas Court of Criminal Appeals has held that conviction of crime in a state court by use of coerced, forced or involuntary confession constitutes denial of due process as guaranteed by U.S. CONST. amend. XIV, § 1. *Prince v. State*, 155 Tex. Crim. 108, 231 S.W.2d 419 (1950). The same proposition was announced in *Golemon v. State*, 157 Tex. Crim. 534, 247 S.W.2d 119 (1952).

The West Virginia Supreme Court of Appeals has never decided this question, nor do we find any decision of the Supreme Court of Virginia in which a coerced confession admitted in evidence was held to be a denial of due process. However, the West Virginia court held in *State v. Sponaugle*, 45 W. Va. 415, 32 S.E. 283 (1898), that the Supreme Court of the United States is to decide finally whether legislation or action under state authority is due process of law. The United States Supreme Court stated in *Rochin v. People*, 342 U.S. 165 (1952), that involuntary verbal confessions are inadmissible in state criminal trials under the due process clause of the fourteenth amendment, even though statements contained in them may be independently established as true. Under these two holdings, one by the Supreme Court of Appeals of West Virginia and the other by the United States Supreme Court, it would appear that the West Virginia courts are bound by the proposition that the admission of a coerced confession in evidence is a denial of due process.

From this review of authorities, it appears that the confession admitted in evidence was an involuntary confession under the law of the majority of jurisdictions, including West Virginia. The use of a coerced confession in evidence is not permitted, and such admission is a denial of due process under U.S. CONST. amend. XIV, § 1.

In the principal case a state court's admission of a coerced confession in a criminal case constituted error, and once again we find the Supreme Court of the United States carefully guarding the rights of the accused under the due process clause of the federal constitution.

J. F. W., Jr.