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Evidence - Confessions - Admissability When Prisoner Is Detained Without Arraignment - The Federal Rule

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McNABB V. U. S.—THE FEDERAL RULE OF ADMISSIBILITY OF CONFESSIONS

A new rule of evidence to be followed in Federal Courts has been enunciated by the Supreme Court of the United States in two recent appeals of criminal convictions.[1] The decisions deal with convictions resulting from confessions obtained while the parties accused were illegally detained without arraignment before a judicial officer in contravention of certain statutes.

In neither case, did the decision rest upon the ground that the confessions were not voluntarily made, and that hence the prisoners were compelled to testify against themselves contrary to the provisions of the fifth Amendment to the Federal Constitution; in fact, the Court, speaking through Justice Frankfurter, specifically laid the argument of constitutional questions to the side and declared that it would exclude the confessions in the exercise of its powers of supervisory control over inferior Federal tribunals. How great a change in the rules governing the admissibility into evidence of confessions in criminal cases is wrought by these decisions can only be estimated by first considering the facts of each case.

The McNabb case involved three members of a mountaineer clan accused of shooting a Federal Alcohol Tax Division officer. Freeman and Raymond McNabb were arrested shortly after the shooting; the third of the trio surrendered the next day. All three were young, possessed of only a fourth grade education, and none had ever traveled beyond the limits of the McNabb settlement. None of the three were arraigned before a judicial officer as required by the alcohol tax administration acts[2] or by the provisions of the general criminal code.[3] All were held incommunicado and subjected to protracted questioning both singly and as a group. Finally Benjamin, told by officers that his cousins had accused him of having fired the fatal shot, repudiated his earlier denials, admitted the shooting and claimed he had done it at the instigation of the other two. In the face of this confession, the brothers admitted that they were present at the time of the shooting.

The confessions constituted the government case, and though they were repudiated in open court, a conviction was obtained upon the strength of them and the conviction was sustained in the Circuit Court of Appeals. Upon certiorari, counsel for the appellants laid stress in

[1] McNabb v. U. S., 63 S.Ct. (1942); Anderson v. U. S., 63 S.Ct. 599 (1942).

[2] Liquor tax law violators are required to be taken before a judicial officer in the county where apprehended.

[3] "It shall be the duty of the marshal, his deputy, or other officer who may arrest a person charged with crime to take the defendant before the nearest U. S. commissioner or nearest judicial officer having jurisdiction for hearing, commitment, or the taking of bail." 18 U.S.C. 595.

the oral argument on the constitutional issue involved, contending that the forcible detention of the prisoners without arraignment until they had confessed amounted to duress, and that in admitting the confessions the court had compelled the prisoners to give testimony against themselves.

The court, speaking through Justice Frankfurter, found that it was not necessary to decide the constitutional issue thus raised, but that the court would order the confessions excluded in the exercise of its supervisory power over inferior Federal courts. In this connection it was said:

> "Judicial supervision of the administration of criminal justice in the Federal courts implies the duty of establishing and maintaining civilized standards of procedure and evidence. Such standards are not satisfied by observance of those minimal historic safeguards for securing trial by reason which are summarized as 'due process of law' and below which we reach what is really trial by force."

The reasoning of the tribunal seems to be that legislation directed to bringing the accused before a magistrate immediately upon his being taken into custody, while it does not confer any right rising to the dignity of a constitutional right, does evince a legislative intent to protect an individual from examination by authorities until cause has been shown for holding him. To admit a confession obtained in violation of provisions requiring speedy arraignment would make the courts accomplices in a willful breach of the spirit of the law. The word "spirit" is used advisedly because Congress has not forbidden the use of confessions obtained in this manner.[4]

Anderson v. *United States, supra,* decided concurrently with the *McNabb* case, originated in the Federal court for the District of Tennessee, and involved a prosecution of eight miners for violence growing out of a labor dispute. Federal authorities joined with local police in investigating the case because of the destruction of power cable towers belonging to the Tennessee Valley Authority. The prisoners were arrested by the local sheriff without warrant, though such arrests could not be summarily made because the destruction of power lines is merely a misdemeanor.[5] Parties thus arrested were held in custody and questioned individually for periods varying from 5 days to overnight, until under the impression that the others had confessed all had signed statements admitting guilt. In excluding these confessions and reversing the convictions obtained the court made two extensions upon the doctrine of the McNabb decision. Confessions so obtained are to be excluded though obtained by state officers with the mere tacit con-

[4] See Justice Frankfurter's statement to this effect in opinion.
[5] Sec. 11515 Michie's code, 1938.

sent of federal authorities; and convictions of those implicated in confessions obtained in this manner will be reversed as readily as the convictions of those who themselves made the confessions.

While the court rested its decision in the *Anderson* case upon its reasoning in the former decision the following language used in describing the prisoners seems to be a reversion, perhaps unconsciously, to the idea that the confinement was a species of duress:

> "Unaided by relatives, friends or counsel, these men were unlawfully held, some for days, and subjected to long questioning in the hostile atmosphere of a small, company dominated mining town."

Such language is at least as consistent with the theory of unconstitutional duress as with the announced basis of the McNabb decision.

Where does this decision place the Federal courts in relation to state courts? It has been a quite frequent occurrence that prisoners accused of crimes have, under prolonged police questioning before arraignment, made confessions which have subsequently been repudiated in open court. Because in such circumstances charges of duress are frequently made when the prisoner has merely suffered a change of heart after making a voluntary confession, the problem has received, as might be expected, rather full judicial consideration.

It has been said[6] that the courts have taken three positions as to the admissibility into evidence of a confession made by a party illegally in custody. They may be summarized as follows:

1. The practice of holding a prisoner without arraignment is so reprehensible that any confession obtained under such circumstances is inadmissible;
2. While such practice is undesirable, statements which have been *freely* made cannot be rejected by the court;[7]
3. The procedure is not only to be condoned, but is useful and desirable.

The second view is the rule of England[8] and of the vast preponderance of American states; though a New York decision under a similar statute makes it incumbent upon the trial judge to charge the jury that "any unnecessary delay in arraignment is forbidden by law, and is to be considered by them in determining what weight they will give the confession."[9] The second view was also accepted as the law in the Inferior Federal courts[10] and seems to have been tacitly admitted

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[6] Reg. v. Elliot, 31 Ont. Rep. 14.
[7] 2 Jones *Evidence* 893 (1926).
[8] 2 Hawkins' *Pleas to the Crown* (8th ed.)595 sec. 34. But see Reg. v. Thornton 1 Moody C.C. 27 (1824) holding in seven to three decision that confession was admissable on a fact situation comparable to present cases.
[9] People v. Alex, 265 N. Y. 192, 192 N. E. 289 (1934).
[10] Murphy v. U. S., 285 Fed. 801, cert. den. 261 U. S. 617, 67 L.Ed. 829, 43 S.Ct. 362 (1923); Purpura v. U. S. 262 Fed. 473 (C.C.A. 4th, 1919).

to be the law by the Supreme Court in decisions involving the question of unconstitutional duress.[11] Such view is born out by the emphasis which apparently was laid in the oral argument of the present case upon the constitutional question involved.

By the present decisions, the Federal courts are now committed to a recognition of the first doctrine rather than the second.

The effect of this decision, insofar as the Federal courts are concerned, would seem to be to burden a confession obtained while authorities held a party unreasonably long before arraignment with an irrefutable presumption that it was obtained under duress and consequently the same result is obtained as if the admission thereof would be in violation of the Fifth Amendment. Inasmuch as the reversals were put on the power of the Supreme Court to supervise the procedure in inferior Federal courts rather than on constitutional grounds, the decision will affect directly only the Federal courts, no question being raised about possible extension to the State courts by the 14th amendment; although the decision may have great persuasive power in state courts. "The due process clause does not impose upon the states a duty to establish ideal systems for the administration of justice,"[12] and it seem probable that state courts will continue to operate much closer to Justice Frankfurter's "minimal standard" by continuing to inquire solely into the voluntary nature of the confession.

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[11] Bram v. U. S., 168 U. S. 532, 42 L.Ed. 568, 18 S.Ct. 183 (1897).
[12] Owenby v. Morgan, 256 U. S. 94, 41 S.St. 435, 65 L.Ed. 837, 17 A.L.R. 873 (1921).