Constitutional Law - Confessions - New York Procedure for Determining the Voluntariness of a Confession Violates the Due Process Clause of the Fourteenth Amendment

R. Evans

Follow this and additional works at: https://scholarship.kentlaw.iit.edu/cklawreview

Part of the Law Commons

Recommended Citation
Available at: https://scholarship.kentlaw.iit.edu/cklawreview/vol42/iss1/6

This Notes is brought to you for free and open access by Scholarly Commons @ IIT Chicago-Kent College of Law. It has been accepted for inclusion in Chicago-Kent Law Review by an authorized editor of Scholarly Commons @ IIT Chicago-Kent College of Law. For more information, please contact dginsberg@kentlaw.iit.edu.
It is interesting to note, however, that here the Court was not only concerned with the freedom to travel. The freedom to travel was firmly bound to the freedom to associate with groups of one's own choosing. Membership in subversive organizations resulted in a bar to the use of a passport necessary to travel.

The *Aptheker* decision makes it clear that Congress cannot validly prohibit peace-time foreign travel by all members of Communist organizations. The decision further suggests that such travel might be limited if the act proscribed the use of passports by individuals (a) knowing themselves to be members of registered organizations and knowing the subversive purposes of such organizations, (b) being active in such organizations, and (c) intending to travel abroad with the object of engaging in conduct that could be dangerous to internal security. Whether a statute so limited could effectively prevent subversives from engaging in conduct abroad that would be dangerous to internal security appears doubtful. Dangerous activity could be engaged in by inactive or seemingly inactive Party members. Certainly, the intention of engaging in dangerous activities abroad would not be truthfully communicated to passport officials before departure from the United States. After the individual returned to the United States, the giving of orders and exchange of secret information would have taken place, the training would have been received, and the other dangerous activities accomplished. More drastic measures would then be necessary to minimize the effects of the activities.

It is now apparent, however, that the freedom to travel declared to be guaranteed by the Due Process Clause will be viewed by the courts with respect approaching that accorded to the First Amendment freedoms.

Mrs. S. Meloy

---

**CONSTITUTIONAL LAW**—**Confessions**—**New York Procedure for Determining the Voluntariness of a Confession Violates the Due Process Clause of the Fourteenth Amendment**—In the case of *Jackson v. Denno*, 378 U.S. 368, 84 Sup. Ct. 1774 (1964), the United States Supreme Court held that the New York procedure for determining the voluntariness of a confession did not adequately protect the defendant's constitutional right to be free from a conviction based on a coerced confession.

Under the New York rule, the trial judge was required to make a preliminary determination regarding the voluntariness of a confession.

---

1 It is now axiomatic that a defendant in a criminal case is deprived of due process of law if his conviction is founded, in whole or in part, upon an involuntary confession, without regard for the truth or falsity of the confession. *Rogers v. Richmond*, 365 U.S. 534, 81 Sup. Ct. 735 (1961).

offered by the prosecution and exclude it if in no circumstances could the confession be deemed voluntary. If the evidence presented a fair question as to the voluntariness of the confession, the judge "must receive the confession and leave to the jury, under proper instructions, the ultimate determination of its voluntary character and also its truthfulness."4

On June 14, 1960, at about 1:00 A.M., Jackson entered a Brooklyn hotel, drew a gun, and took some money from the room clerk. Later, Jackson encountered a policeman on the street; a struggle occurred during which both men drew their guns and fired. The policeman was fatally wounded, and Jackson was shot in the chest, injuring his liver and one lung. At about 2:00 A.M. Jackson was questioned at the hospital by a detective who testified that Jackson admitted committing the robbery, killing the policeman, and firing the first shot. At 3:55 A.M. Jackson was given drugs to prepare him for an operation. Immediately thereafter Jackson was questioned by an assistant District Attorney in the presence of hospital personnel. Jackson declined to answer the questions at first, but in response to further questions he admitted shooting the policeman and admitted firing the first shot.

Jackson was indicted for murder in the first degree. The statements made by him at the hospital were introduced into the record. Jackson took the stand and admitted the robbery and the shooting, but insisted that the policeman drew his gun first and fired the first shot. He stated that he was in pain, gasping for breath, was refused water, and was told he would not be left alone until he gave the police the answers they wanted. He didn't remember the questions asked nor the answers given. The state offered testimony that Jackson was refused water because of the operation and that the drugs administered had no effect on the interrogation.

Jackson's counsel requested a verdict of second degree murder or manslaughter. Counsel's main effort was to negate the element of premeditation and intent necessary for first degree murder by separating the robbery from the killing, and indicating that the policeman fired the first shot.

The jury was instructed that if it found the confession involuntary, it was to disregard it entirely and determine guilt or innocence solely from the other evidence; alternatively, if it found the confession voluntary, it was to determine its truth or reliability and afford it weight accordingly. The jury found Jackson guilty of murder in the first degree. The conviction was affirmed by the New York Court of Appeals.5

3 A fair question occurs "... where certain facts bearing on the issue are in dispute or where reasonable men could differ over the inferences to be drawn from undisputed facts..." Jackson v. Denno, 378 U.S. 368, 377, 84 Sup. Ct. 1774, 1781 (1964).
discerning the voluntariness of a confession was unconstitutional. The District Court denied the petition,6 and the Court of Appeals affirmed the denial.7 The Supreme Court granted certiorari.

In the majority opinion,8 the Supreme Court held that a "defendant objecting to the admission of a confession is entitled to a fair hearing in which both the underlying factual issues and the voluntariness of his confession are actually and reliably determined,"9 and that the New York procedure did not afford a reliable determination of the voluntariness of the confession. Thus, Jackson was deprived of his constitutional right to be free of a conviction based upon a coerced confession and his conviction could not withstand constitutional attack under the due process clause of the Fourteenth Amendment.10

In determining that the New York procedure did not afford a reliable determination of the voluntariness of the confession, the Court stressed the fact that the New York jury returned only a general verdict upon the ultimate question of guilt or innocence. The Court pointed out several uncertainties produced by the New York procedure which caused it to be an unreliable determination of the voluntariness issues. First, it was impossible to discover if the jury found the confession voluntary and relied upon it, or involuntary and ignored it. Nor was there any indication of how the jury resolved disputes in evidence concerning the crucial facts underlying the voluntariness issue, or that these matters were resolved at all.

The disadvantages of these uncertainties were noted by the Court in Stein v. New York.11 Since there is no separate decision on the confession issue, a defendant, on appeal, does not know what result to attack, and a reviewing court does not know if the confession was received or rejected as evidence of guilt; therefore, there is an absence of assurance that the confession did not serve as make-weights in a compromise verdict.12 Notwithstanding these difficulties in the New York procedure, the Supreme Court in the Stein case had found no constitutional deprivation. The Court reached that conclusion on the basis of alternative assumptions regarding the manner in which the jury might have resolved the coercion issue. Either the jury

7 Jackson v. Denno, 309 F.2d 573 (2d Cir. 1962).
8 The decision was 5-4 with Justices Black, Clark, Harlan, and Stewart dissenting.
9 A fair question occurs "... where certain facts bearing on the issue are in dispute or where reasonable men could differ over the inferences to be drawn from undisputed facts...." Jackson v. Denno, 378 U.S. 368, 377, 84 Sup. Ct. 1774, 1781 (1964).
10 Confessions obtained from an accused by overpowering his will, whether through physical violence or more subtle forms of coercion, are offensive to the constitutional guarantee of liberty. A trial with the use of a coerced confession deprives an accused of his liberty without due process of law. Hysler v. Florida, 315 U.S. 411, 414, 62 Sup. Ct. 688, 690 (1942).
11 346 U.S. 156, 177, 73 Sup. Ct. 1077, 1089 (1953).
12 Some jurors accepted the confession to overcome doubts of guilt, and yet others never reached a separate and definite conclusion as to the confession, but returned an unanalytical and impressionistic verdict based on all they had heard. Ibid.
determined the disputed issues of fact against the accused, found the confession voluntary, and therefore properly relied upon it; or it found the facts in favor of the accused and deemed the confession involuntary, in which case it disregarded the confession and adjudicated guilt solely on the other evidence.

The majority in the *Jackson* case denied the validity of the assumptions used to support the constitutionality of the New York procedure in the *Stein* case and specifically overruled the case. The Supreme Court felt that the decision of the *Stein* case failed to recognize the dangers to an accused's rights under either of the assumptions. The assumption that the jury found the confession voluntary could only be arrived at on the further assumptions that the jury had actually found the disputed issues of fact against the accused, and that these findings were reliably arrived at in accordance with considerations that are permissible and proper under federal law. The jury is at once given both the evidence showing the voluntariness and all of the corroborating evidence showing that the confession is true and that the defendant committed the crime. Therefore, the jury may believe the confession and believe that the defendant has committed the very act with which he is charged, which may in turn seriously distort judgment of the credibility of the accused and his testimony concerning the critical facts surrounding the confession. The jury may also find it difficult to understand the policy forbidding reliance upon a coerced, but true, confession.\(^8\) That a true confession must also be voluntary if it is to be used at all generates pressure to find it voluntary. Otherwise, the jury may feel, the guilty will go free.

The Supreme Court found the alternative assumption, that the jury found the confession involuntary and disregarded it, equally unacceptable. The defendant's confession is solidly implanted in the jury's mind because it has not only heard the confession, but has been instructed to consider and judge its voluntariness, and is in a position to assess whether it is true or false. If the jury does find the confession involuntary, can the jury then disregard the confession in accordance with its instructions? If there are doubts about the sufficiency of the other evidence, can the jury consciously eliminate the confession in making a determination, especially where the confession is possibly true? The injection of the irrelevant and impermissible considerations of the truthfulness of the confession make it impossible to assume that a jury has not been influenced by the confession in its final determination.

The Supreme Court in *Jackson* then concluded that since under neither

---

\(^8\) The policy behind forbidding reliance upon a coerced confession was based upon the probable unreliability of the confession, the strongly felt attitude of our society that important human values are sacrificed when an agency of the government in the course of securing a conviction wrings a confession out of the accused against his will, and because of the deep rooted feeling that the police must obey the law while enforcing the law; that in the end, life and liberty can be as much endangered from illegal methods used to convict those thought to be criminals as from the actual criminals themselves. *Jackson v. Denno*, 378 U.S. 368, 382, 84 Sup Ct. 1774, 1785 (1964).
DISCUSSION OF RECENT DECISIONS

assumption could it be reasonably assured that the voluntariness issue was reliably determined, the New York procedure posed substantial threats to a defendant's constitutional right to be free from a conviction based upon an involuntary confession. Therefore, the New York procedure for determining the voluntariness of a conviction was unconstitutional under the due process clause of the Fourteenth Amendment.

The dissent, written by Mr. Justice Harlan, emphasized the dependance of our system of criminal justice on jury trials and the ability of a jury to follow instructions. Mr. Justice Harlan believed that the basis of the majority's decision was an unwillingness to entrust to a jury the sensitive task of determining the voluntariness of a confession; he noted that in particular the court hypothesized a variety of ways in which the jury may have disregarded its instructions. He stated that the Supreme Court has repeatedly rejected speculation that the jurors disregarded instructions in arriving at a verdict as a reason for adopting a particular trial practice. He concluded that the Supreme Court's constant refusal in the past to accept as a rationale for decision the danger of jury incompetence demonstrated the lack of constitutional foundation for its decision.

In answer to Mr. Justice Harlan, the majority opinion indicated that every person, whether he be a judge or a juror, is not capable of disregarding certain facts within his knowledge in arriving at a decision, but will be influenced by his knowledge of these facts even if instructed to disregard these facts. The majority opinion merely realized there was a limit on the ability of a person to follow instructions, and a point where instructions were incapable of being followed.

The Court in disposing of the Jackson case decided Jackson was entitled to a separate hearing in the state court on the question of the voluntariness of the confession, and if, at the conclusion thereof, it were determined that the confession was voluntary there would be no constitutional necessity for a new trial on the issue of guilt; but if the confession were determined to be involuntary a new trial would be required without the confession in evidence.

The holding in this case means that hundreds of prisoners in the state of New York have been convicted in a manner which is unconstitutional. The same is true of prisoners convicted in at least fourteen other states. These prisoners, under the Court's holding, are entitled to a separate hearing on the voluntariness of their confession and a new trial if at this hearing it is determined that the confession was involuntary. The decision, however,

does not solve all the problems in this area. If, after a separate determination is made, the confession is found to be involuntary, must the court impanel a new jury to determine the guilt or innocence? If this were not done, the jury might be influenced by the involuntary confession as was pointed out in the *Jackson* case.\(^\text{16}\)

It should be noted that the Court in the *Jackson* case for the first time rejected the presumption that juries follow the instructions of the court.\(^\text{17}\) The Court made an objective appraisal of the presumption, and found it to be unsound because under certain circumstances a jury cannot consciously obey the court's instructions. The denial of the presumption that juries follow the court's instructions indicates that in the future the Court will be carefully examining the jury's duties during a trial to determine whether they are capable of fulfilling these duties under the circumstances involved. The *Jackson* case may be the start of a revision of American law concerning the jury system.

R. Evans

**Torts—Statute of Limitations in a Malpractice Action Held To Have Started Running at the Time of the Operation**—In *Mosby v. Michael Reese Hospital*, 49 Ill. App. 2d 336, 199 N.E.2d 633 (1st Dist. 1964), the Illinois Appellate Court for the First District was confronted with the problem of when the statute of limitations should begin to run in an action for a negligently performed surgical operation.

The plaintiff, Rowena Mosby, was operated on by agents of the defendant hospital on March 25, 1956. On December 30, 1960, the plaintiff underwent a second operation at another hospital. It was then discovered for the first time that a needle had been left in the plaintiff's body during the first operation. The needle had, by the time of the second operation, passed into the area of the plaintiff's right knee and had caused serious permanent damage.

The complaint consisted of two counts. The first count alleged that the defendant's agents had negligently deposited a surgical needle in the plaintiff's body during the operation and had failed to remove it at the conclusion thereof. The second count repeated the allegations of the first count but

\(^{16}\) Another question likely to be presented to the Court will be whether the so-called Massachusetts rule is constitutional. Under the Massachusetts rule the judge hears all the evidence and rules on voluntariness before allowing the confession into evidence. If he finds the confession voluntary, the jury is then instructed that it must also find that the confession was voluntary before it may consider it, *Jackson v. Denno*, 378 U.S. 368, 417, 84 Sup. Ct. 1774, 1802 (1964). Some courts and commentators have been unable to see any difference between the New York rule and the Massachusetts rule. Whatever the theoretical variance, in practice the rules are likely to show a distinction without a true difference.