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## CRIMINAL LAW AND PROCEDURE - ADMISSIBILITY OF CONFESSIONS - EXHORTATIONS TO TELL THE TRUTH

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CRIMINAL LAW AND PROCEDURE — ADMISSIBILITY OF CONFESSIONS — EXHORTATIONS TO TELL THE TRUTH — Defendant, while in the custody of police officers, confessed to the crime of murder. It was shown that the police officers during the course of defendant's examination, stated to the defendant that "it was better for him to tell the whole truth," and "You are not telling the truth, give us the truth on this," "You might as well tell the truth; to me now," "I advise you to tell the truth in this case." In the subsequent prosecution of the defendant for murder, it was *held* that the confession was properly admissible notwithstanding these statements by the officers. *Commonwealth v. Mabey*, (Mass. 1937) 12 N. E. (2d) 61.

In general, a confession of guilt by the accused is not admissible against him

in a criminal trial unless it was made voluntarily.<sup>1</sup> The purpose of this rule is to prevent the admission into evidence of confessions which are likely to be false and untrustworthy.<sup>2</sup> Variations in the factual details of each case make difficult the task of precisely defining those circumstances under which a confession will be deemed to have been made voluntarily. However, a number of general observations may be made which are helpful. Thus, it is generally held that the failure of the person eliciting the confession to caution the confessor that his statements may be used against him will not render the confession inadmissible.<sup>3</sup> However, in one state such a caution is deemed essential to render admissible a judicial, as contrasted to an extrajudicial, confession;<sup>4</sup> and in two other states, statutes require the caution as concerns confessions under certain circumstances.<sup>5</sup> On the other hand, a promise or holding out of definite benefits to the accused as inducement to the confession will generally render it involuntary and inadmissible.<sup>6</sup> However, if the promise was made a sufficient time either before or after the giving of the confession so that it is clear that the promise did not induce the confession, then it will be held voluntary and admissible.<sup>7</sup> A confession obtained by the influence of threats against the accused

<sup>1</sup> Cases are collected in 16 C. J. 717 (1918).

<sup>2</sup> 2 WIGMORE, EVIDENCE, 2d ed., 139 (1923). Also see, *State v. Sherman*, 35 Mont. 512 at 521, 90 P. 981 (1907), where it is stated: "The principle of law which rejects a confession made by one accused of crime, when made under circumstances which indicate that some inducement was held out to the accused which would be sufficient to induce a reasonable person, in a like situation, to speak out regardless of the truth or falsity of his statement, rather than remain silent, is based upon the unreliability of such testimony—the probability of the statements being untrue." See also, the following cases where the confession was held admissible, notwithstanding that it was given under promise of secrecy: *Commonwealth v. Edwards*, 318 Pa. 1, 178 A. 20 (1935); *State v. Novak*, 109 Iowa 717, 79 N. W. 465 (1899); *Commonwealth v. Goodwin*, 186 Pa. 218, 40 A. 412 (1898).

<sup>3</sup> *Link v. State*, 217 Wis. 582, 25 N. W. 428 (1935); *Watson v. State*, 166 Miss. 194, 146 So. 122 (1933); *Commonwealth v. Buck*, 285 Mass. 41, 188 N. E. 613 (1933); *State v. Terrell*, 175 La. 758, 144 So. 488 (1932); *State v. McGuire*, 327 Mo. 1176, 39 S. W. (2d) 523 (1931); *People v. Fahrner*, 330 Ill. 516, 162 N. E. 133 (1928); *People v. Doran*, 246 N. Y. 409, 159 N. E. 379 (1927).

<sup>4</sup> *McDonald v. State*, 70 Fla. 250, 70 So. 24 (1915).

<sup>5</sup> N. C. Code (1931), § 4561; Tex. Code Crim. Proc. (1928), art. 727.

<sup>6</sup> *People v. Martorano*, 359 Ill. 258, 194 N. E. 505 (1935); *Salvaggio v. State*, 126 Tex. Cr. 166, 70 S. W. (2d) 593 (1934); *Clash v. State*, 146 Miss. 811, 112 So. 370 (1927); *People v. Campbell*, 359 Ill. 286, 194 N. E. 533 (1935); *White v. State*, 105 Tex. Cr. 169, 287 S. W. 273 (1926). Notice that the federal courts hold that a mere holding out of lighter punishment, under ordinary circumstances, will not render the confession inadmissible. *United States v. Lonardo*, (C. C. A. 2d, 1933) 67 F. (2d) 883; *Lewis v. United States*, (C. C. A. 9th, 1934) 74 F. (2d) 173. These federal decisions are contra to the following state decisions: *State v. Livingston*, 202 N. C. 809, 164 S. E. 337 (1932); *Caudle v. State*, 116 Tex. Cr. 4, 33 S. W. (2d) 438 (1930).

<sup>7</sup> *Stewart v. State*, 124 Tex. Cr. 632, 64 S. W. (2d) 782 (1933); *State v. Moore*, 124 Ore. 61, 262 P. 859 (1928); *Phillips v. State*, 102 Tex. Cr. 195, 277 S. W. 679 (1925).

is involuntary and inadmissible.<sup>8</sup> An exhortation to tell the truth, in and of itself, does not render a confession inadmissible.<sup>9</sup> But when such exhortation is accompanied by an expression that it would be better for the accused to tell the truth, a slight conflict of authority arises.<sup>10</sup> It is submitted that the instant case was properly decided in that a false confession would not ordinarily be induced by exhortations to tell the truth, accompanied by the statement that it would be better for the accused to tell the truth. It should be realized, however, that factors such as the age, sex, mental capacity, education, and physical condition of the accused might vary this result in unusual cases.

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<sup>8</sup> *Clary v. Commonwealth*, 163 Ky. 48, 173 S. W. 171 (1915); *People v. Borello*, 161 Cal. 367, 119 P. 500 (1911); *State v. Middleton*, 69 S. C. 72, 48 S. E. 35 (1904); *Beckham v. State*, 100 Ala. 15, 14 So. 859 (1893).

<sup>9</sup> *State v. Caldwell*, 212 N. C. 484, 193 S. E. 716 (1937); *State v. Dixon*, 80 Mont. 181, 260 P. 138 (1927); *State v. Johnson*, 316 Mo. 86, 289 S. W. 847 (1926); *State v. Boyle*, 49 Nev. 386, 248 P. 48 (1926); *People v. O'Brien*, 53 Cal. App. 754, 200 P. 766 (1921).

<sup>10</sup> Those cases holding the confession admissible are: *State v. Hancock*, (Mo. 1937) 104 S. W. (2d) 241; *People v. Luckett*, (Cal. App. 1937) 73 P. (2d) 658; *State v. Wickman*, 39 N. M. 198, 43 P. (2d) 933 (1935); *Rowan v. State*, 57 Okla. Cr. 345, 49 P. (2d) 791 (1935); *Hicks v. State*, 178 Ga. 561, 173 S. E. 395 (1934); *State v. Mayle*, 108 W. Va. 681, 152 S. E. 633 (1930). A few cases hold that the confession is inadmissible: *People v. Holick*, 337 Ill. 333, 169 N. E. 169 (1929); *People v. Leavitt*, 100 Cal. App. 93, 279 P. 1056 (1929); *Hammer v. State*, 102 Tex. Cr. 224, 277 S. W. 392 (1925); *People v. Barric*, 49 Cal. 342 (1874).