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Evidence - Spontaneous Declarations - Statement by Injured Party While on Way to Hospital

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EVIDENCE—SPONTANEOUS DECLARATIONS—STATEMENT BY INJURED PARTY WHILE ON WAY TO HOSPITAL—Plaintiffs were injured in an automobile accident involving a car, driven by the defendant's decedent, and two oncoming trucks, one passing the other on a three lane highway. Twenty-five minutes after the accident a state police officer arrived and took the driver

of the passing truck, who was severely burned and in terrific pain, to the hospital. En route and in response to the officer's inquiry, the driver stated that defendant had caused the accident by swerving to the wrong side of the road. The statement was admitted over defendant's objection that it was hearsay, and verdict was rendered for the plaintiff. On appeal, *held*, reversed. The statement was hearsay and not within the spontaneous declarations exception because the circumstances were not such as to preclude premeditation and consideration. *Weshalek v. Weshalek*, 379 Pa. 544, 109 A. (2d) 302 (1954).

The admission of spontaneous declarations¹ as an exception to the hearsay rule is based on the necessity or desirability of resorting to them for unbiased testimony² and their probable trustworthiness because of the circumstances under which they are made.³ Generally, to invoke the exception the utterance (a) must be made during or following an event either startling or at least distracting in its effect, (b) if made after the event, must be made sufficiently soon to allow the assumption of spontaneity, and (c) must relate to the circumstances of the occurrence.⁴ The character of the event necessary is variously described. One view is that it must be "startling enough to produce . . . nervous excitement and render the utterance spontaneous and unreflective."⁵ However, many decisions do not support such a limitation, but merely require that the statement be made while declarant was perceiving the occurrence, or soon thereafter, and that "because of the resultant mental distraction there is reasonable assurance that the utterance is unreflective."⁶ The principal case meets either of these tests. The more important concern is the time element. The conservative view is that the statement must be contem-

¹ The expression "spontaneous declarations" is used rather than "res gestae" because the latter "is a phrase that has been accountable for so much confusion that it had best be denied any place whatever in legal terminology." *United States v. Matot*, (2d Cir. 1944) 146 F. (2d) 197 at 198. For a clear statement of the distinction between spontaneous declarations and verbal acts, see *Keefe v. State*, 50 Ariz. 293, 72 P. (2d) 425 (1937).

² 6 WIGMORE, EVIDENCE §1748 (1940). But death, absence or other unavailability of the witness need not be shown. *State v. Wagner*, 61 Me. 178 (1873). See 14 UNIV. DETROIT L. J. 152 (1951).

³ Ladd, "The Hearsay We Admit," 5 OKLA. L. REV. 271 at 281 (1952). The Georgia statute admits "Declarations accompanying an act, or so nearly connected therewith in time as to be free from all suspicion of device or after thought. . . ." Ga. Code Ann. (1933) §38-305.

⁴ In 32 CORN. L. Q. 115 (1946), the writer suggests that there are five factors to consider, namely, (a) time, (b) place, (c) whether made in response to an inquiry, (d) form of the statement, and (e) physical condition of the declarant. The first three, however, are related to the time when the statement was made, the latter two to the character of the event as it affects the declarant. See also 10 BROOKLYN L. REV. 280 (1941).

⁵ 6 WIGMORE, EVIDENCE §1750 (1940). As to what constitutes a startling occurrence or condition and whether the declarant must be a participant in it, see *Hardman*, "Spontaneous Declarations (Res Gestae)," 54 W. VA. L. REV. 93 (1952); *Harris v. Hughes*, (Mo. App. 1954) 266 S.W. (2d) 763. Cf. *Huffman v. Gaylor*, (Okla. 1954) 267 P. (2d) 564.

⁶ See 46 COL. L. REV. 430 (1946). In *Huffman v. Gaylor*, note 5 *supra*, the motor fell out of plaintiff's car and defendant's statement as to the cause was admitted as a spontaneous declaration. It has been suggested that the factor of pain alone is sufficient basis for considering the declarant's statements unreflective. 37 J. CRIM. L. 419 (1947).

poraneous with the event which produces it;⁷ this is nothing more than the Thayer view of *res gestae*. Although this view still has support,⁸ the general trend is toward admitting statements made after the event but while declarant's mind is still occupied with the circumstances.⁹ This broader view requires only that the time lapse between the event and the declaration be insufficient to permit operation of the motive to falsify.¹⁰ But calculation of time alone provides few answers. The problem under this rule is to determine under what facts lapse of time in conjunction with other factors destroys spontaneity. Thus, exclamatory statements are readily admitted.¹¹ While courts scrutinize the circumstances more closely in the case of narrative declarations, they also are admitted.¹² More important than the character of the statement is the factor of change of locale, a factor present in the principal case. Usually a declaration made after removal from the scene of the event, e.g., at a hospital or on way to a hospital, is inadmissible,¹³ but there are cases where change of scene has not been fatal to the required spontaneity.¹⁴ While instigation of the

⁷ There is authority for admitting a statement made before the event as a spontaneous declaration. *Hodge Drive It Yourself, Inc. v. Cincinnati Gas & Electric Co.*, 90 Ohio App. 77, 96 N.E. (2d) 325 (1950).

⁸ *Waldele v. New York C. & H. R. Co.*, 95 N.Y. 274 (1884); *Goulette v. Grand Trunk R. Co.*, 93 Vt. 266, 107 A. 118 (1919); *Ingersol v. Liberty Bank of Buffalo*, 278 N.Y. 1, 14 N.E. (2d) 828 (1938).

⁹ Compare *Southern Ry. Co. v. Fricks*, 196 Ala. 61, 71 S. 701 (1916) (exclamatory but not immediate, excluded), with *Shipp v. Davis*, 25 Ala. App. 104, 141 S. 366 (1932) (not immediate, admitted); *Williams v. Southern Pacific R. Co.*, 133 Cal. 550 at 555, 65 P. 1100 (1901) ("if afterward, no matter how shortly, it is incompetent"), with *Showalter v. Western P. R. Co.*, 16 Cal. (2d) 460, 106 P. (2d) 895 (1940); and *Blackman v. West Jersey and S.R. Co.*, 68 N.J.L. 1, 52 A. 370 (1902), with *State v. Stephan*, 118 N.J.L. 592, 194 A. 273 (1937).

¹⁰ Ladd, "The Hearsay We Admit," 5 OKLA. L. REV. 271 at 281 (1952). *Sand Springs Ry. v. Piggee*, 196 Okla. 136, 163 P. (2d) 545 (1945); *Showalter v. Western P.R. Co.*, note 9 supra. Under this rule the time lapse may be several hours without destroying the spontaneous character of the declaration. *State v. Buck*, 33 N.M. 334, 266 P. 917 (1927) (4 hours); *State v. Stafford*, 237 Iowa 780, 23 N.W. (2d) 832 (1946) (14 hours).

¹¹ *Louisville E. & St. L.C.R. Co. v. Berry*, 2 Ind. App. 427, 28 N.E. 714 (1891) (declarant scalded); *Roh v. Opocensky*, 126 Neb. 518, 253 N.W. 680 (1934) (declarant in automobile accident).

¹² Self-serving narrative declarations admitted: *Chesapeake & O. Ry. Co. v. Mears*, (4th Cir. 1933) 64 F. (2d) 291; *Fish v. Illinois Cent. Ry.*, 96 Iowa 702, 65 N.W. 995 (1896). Self-inculpatory narrative declarations admitted: *Roach v. Kansas City Public Service Ice Co.*, (Mo. 1940) 141 S.W. (2d) 800 (statement not admissible as admission because declarant was not a party). On the use of the spontaneous declaration rule to admit self-inculpatory statements by defendant's servants who are available, see 163 A.L.R. 101-122 (1946).

¹³ *Stanford v. Holloway*, 25 Tenn. App. 379, 157 S.W. (2d) 864 (1942) (on way to hospital); *Bonner v. Texas Co.*, (5th Cir. 1937) 89 F. (2d) 291 (in hospital); *Washington & G.R. Co. v. McLane*, 11 App. D.C. 220 (1897) (on way to hospital with legs cut off). But see *Mason v. Mootz*, 73 Idaho 461, 253 P. (2d) 240 (1953) (declarant unconscious on way to hospital, statement made in hospital admitted); 163 A.L.R. 148-162 (1946).

¹⁴ *Soderstrom v. Missouri P.R. Co.*, (Mo. App. 1940) 141 S.W. (2d) 73 (on way to hospital); *Pickwick Stages Corp. v. Williams*, 36 Ariz. 520, 287 P. 440 (1930) (on way to hospital); *Stukas v. Warfield-Pratt-Howell Co.*, 188 Iowa 878, 175 N.W. 81 (1920) (in

declaration by an inquiry, as in the principal case, makes it narrative in form, this does not affect its admissibility.¹⁵ There are also intangible factors which may persuade courts to admit noncontemporaneous statements, factors such as death of the declarant¹⁶ or the nature of the action.¹⁷ The third requirement, that the declaration relate to the preceding circumstances, "is a cautionary rather than logically necessary restriction."¹⁸

The court in the principal case, though purporting to follow a liberal approach, found that spontaneity was lost because of the time lapse and change of scene. In *Suhr v. Lindell*¹⁹ the Nebraska court reached an opposite conclusion on very similar facts. The latter decision is preferable for three reasons. First, extreme pain alone should be enough to give credence to the statements.²⁰ Second, in view of the desirability of marshalling all relevant evidence, the trial court's determination to admit the declaration, even if not conclusive, should be given great weight.²¹ Lastly, the court in the principal case in effect requires that the circumstances eliminate all possibility of falsehood²² rather than all probability of falsehood, the test usually applied.²³

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hospital); *Roach v. Great Northern Ry. Co.*, 133 Minn. 257, 158 N.W. 232 (1916) (in hospital).

¹⁵ *Greenlee v. Kansas City Casualty Co.*, 192 Mo. 303, 182 S.W. 138 (1916); *Sho-walter v. Western P.R. Co.*, note 9 supra; *Commonwealth v. Noble*, 371 Pa. 138, 88 A. (2d) 760 (1952). *Contra*: under the conservative rule: *Greener v. General Electric Co.*, 209 N.Y. 135, 102 N.E. 527 (1913); *Hunter v. Derby Foods*, (2d Cir. 1940) 110 F. (2d) 970.

¹⁶ *Stukas v. Warfield-Pratt-Howell Co.*, note 14 supra.

¹⁷ *Jacobs v. Village of Buhl*, 199 Minn. 572, 273 N.W. 245 (1937) (workmen's compensation case: 45 minutes elapsed, declaration admitted).

¹⁸ 6 WIGMORE, EVIDENCE §1750 (1940). That the declaration need not relate to the main event, see *State v. McKinney*, 88 W. Va. 400, 106 S.E. 894 (1921).

¹⁹ 133 Neb. 856, 277 N.W. 381 (1938) (statement by fatally injured truck driver, in response to inquiry made by physician thirty minutes after accident, that defendant was on wrong side of road).

²⁰ 37 J. CRIM. L. 419 (1947).

²¹ That the determination of spontaneity should be left to the trial court's discretion, see *Huffman v. Gaylor*, note 5 supra; *Davis v. Fay*, 265 Wis. 426, 61 N.W. (2d) 885 (1954).

²² This is the criticism made by Justice Musmanno in his dissent. Principal case at 304.

²³ "The exceptions, at most, rest upon circumstantial *probability*, not a certainty," and "the idea back of the exceptions is that conditions were such that the witness would *probably* speak the truth as he knew it." Ladd, "The Hearsay We Admit," 5 OKLA. L. REV. 271 at 281, 286 (1952) (emphasis added).