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Evidence--Delay in Arraignment--Admissability of Confessions (Carignan v. United States, 72 Sup. Ct. 97 (1951))

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Other factors of equal, or at least comparable, importance may demonstrate themselves at the trial.[17]

In any event, the soundness of the instant ruling is patent. The equitable process, making provision as it does for a balancing of rights and hardships, is ample protection for the rights of defendants, and ample reason for allowing plaintiff to voice his bill.

EVIDENCE—DELAY IN ARRAIGNMENT—ADMISSIBILITY OF CONFESSIONS.—While under lawful arrest on an assault charge, the petitioner was interrogated concerning a murder unconnected with the assault. He confessed to the murder and was convicted thereof. The federal district judge refused to permit him to testify to facts indicative of the alleged involuntary nature of his confession. The conviction was reversed by the Court of Appeals on the sole ground that the confession, procured before arraignment on the murder charge, was inadmissible. *Held,* modified and affirmed. Although the trial judge's refusal to admit the petitioner's testimony was reversible error, failure to arraign him on the murder charge did not, per se, render the confession inadmissible. *Carignan v. United States,* 72 Sup. Ct. 97 (1951).

Coerced confessions are inadmissible as evidence of guilt in both state and federal courts of the United States.[1] Introduction of such a confession into evidence clearly violates the defendant's constitutional right to "due process of law." [2] However, coercion is not to be presumed from the mere fact that a confession was obtained while the accused was in police custody.[3] The validity of a confession was formerly tested by its voluntary nature,[4] even those obtained by planned deception remaining available to aid the prosecution's case.[5]

In 1943, the opinion of the United States Supreme Court in *McNabb v. United States* [6] established a new rule of evidence ap-

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[17] For an exhaustive treatment of the factors considered by courts of Equity in granting or denying specific performance, see Note, 65 A. L. R. 7 (1930).

[1] Malinski v. New York, 324 U. S. 401 (1944); Chambers v. Florida, 309 U. S. 227 (1940); Brown v. Mississippi, 297 U. S. 278 (1936); Bram v. United States, 168 U. S. 532 (1897); *see* Lisenba v. California, 314 U. S. 219, 237 (1941).

[2] *Ibid.*

[3] *See* McNabb v. United States, 318 U. S. 332, 346 (1943); Sparf and Hansen v. United States, 156 U. S. 51, 55 (1895).

[4] *See* Ziang Sun Wan v. United States, 266 U. S. 1, 14 (1924); Wilson v. United States, 162 U. S. 613, 623 (1896).

[5] *See* Young v. United States, 107 F. 2d 490, 492 (5th Cir. 1939); Lewis v. United States, 74 F. 2d 173, 177 (9th Cir. 1934).

[6] 318 U. S. 332 (1943).

plicable to federal courts,[7] which was not derived from constitutional limitations. The rule has been stated thus: ". . . [A] confession is inadmissible if made during illegal detention due to failure promptly to carry a prisoner before a committing magistrate whether or not the 'confession is the result of torture, physical or psychological . . . .' "[8] The defendants in the *McNabb* case[9] had been subjected to protracted questioning while in police custody, and prior to commitment, in violation of a statutory provision[10] commanding production of a prisoner before a committing magistrate without unnecessary delay. Without ruling on the voluntary or involuntary nature of a confession obtained in the course of this interrogation, the Court ruled against its admissibility since it had been obtained during an illegal detention. The Court opined that were such confessions to be countenanced, the statute prohibiting illegal detentions would render little protection to the harassed suspect.[11]

Subsequently, in *United States v. Mitchell,*[12] the Court decided that a confession made a few minutes after arrest, was admissible despite a *subsequent* illegal detention due to delay in arraignment. Mr. Justice Frankfurter, speaking for a majority of the Court, explained and distinguished the *McNabb* case, stating that the decisive feature in that prosecution was the purpose of the illegal detention: to extract inculpatory statements by means of protracted questioning and psychological pressure.[13] Thus, the inquiry shifted to the causative influence of the illegal detention. This modified version of the *McNabb* rule found expression in a number of cases subsequent to the *Mitchell* case.[14]

A few years later the Supreme Court, in *Upshaw v. United States,*[15] reaffirmed the strict rule of the *McNabb* case. Here, the arresting officers admittedly prolonged the period between arrest and arraignment for the purpose of extracting a confession.[16] The delay in commitment, for the sole purpose of obtaining a confession, was an illegal delay and so rendered the confession inadmissible. This was true even though the detention was not shown to have *induced* the confession. Thus, it is the illegality of the detention and not its

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[7] ". . . [T]his Court has, from the very beginning of its history, formulated rules of evidence to be applied in federal criminal prosecutions." *Id.* at 341. *See* United States v. Reid, 12 How. 361, 363 (U. S. 1851).

[8] Upshaw v. United States, 335 U. S. 410, 413 (1948).

[9] McNabb v. United States, 318 U. S. 332 (1943).

[10] 18 U. S. C. § 595 (1946), *now codified in* FED. R. CRIM. PROC. 5(a) (1948).

[11] McNabb v. United States, 318 U. S. 332, 345 (1943).

[12] 322 U. S. 65 (1944).

[13] *Id.* at 67.

[14] See Brinegar v. United States, 165 F. 2d 512 (10th Cir. 1947); Blood v. Hunter, 150 F. 2d 640 (10th Cir. 1945); Ruhl v. United States, 148 F. 2d 173 (10th Cir. 1945).

[15] 335 U. S. 410 (1948).

[16] *Id.* at 414.

causative influence which precludes the confession's admission into evidence.

When the illegality alleged is an unnecessary delay in commitment, in violation of Rule 5(a), the inquiries left open by the *Upshaw* case are: (1) What constitutes a necessary delay in arraignment? (2) At what point does a delay in arraignment become an illegal detention? The answers to these questions will vary with the facts and circumstances of each case.[17] Concededly, mere failure to arraign a prisoner immediately does not render the detention illegal. Delays varying between three[18] and ten[19] hours have been considered not unreasonable. One of the factors to be considered is the availability of an officer empowered to commit.[20] Failure to bring a prisoner before a committing magistrate until regular office hours does not amount to an unreasonable delay.[21] Indicating its willingness to broaden the interpretation of what constitutes a necessary delay, one court stated that a full day's delay was not unreasonable, since such time is often necessary to verify the available facts.[22]

A comparison of the prompt commitment duty imposed upon federal officers, with the rule binding state police shows the latter to be less stringent. Unencumbered by the *McNabb* rule,[23] the state court's inquiry is directed toward the coercive influence of the detention. In *Gallegos v. Nebraska*,[24] a delay of twenty-five days was not considered unreasonable, when the size of the town and its limited facilities for commitment were taken into account.[25]

The *McNabb* rule has been criticized for its inability to meet emergencies requiring a delay in arraignment. The problem presented in conspiracy prosecutions is an outstanding example. The notoriety of the arraignment may prevent the apprehension of coconspirators and afford them an opportunity for escape.[26] Moreover, an investigation into the veracity of statements made by the accused

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[17] Arkowskey v. United States, 158 F. 2d 649, 650 (D. C. Cir. 1946).

[18] Mergner v. United States, 147 F. 2d 572 (D. C. Cir.), *cert. denied*, 325 U. S. 850 (1945).

[19] Alderman v. United States, 165 F. 2d 622 (D. C. Cir. 1947).

[20] Garner v. United States, 174 F. 2d 499 (D. C. Cir. 1949).

[21] Symons v. United States, 178 F. 2d 615, 620 (9th Cir. 1950). *But see* Arkowskey v. United States, 158 F. 2d 649 (D. C. Cir. 1946).

[22] Haines v. United States, 188 F. 2d 546, 553 (9th Cir. 1951). For an appraisal of the broadened interpretation of what constitutes a necessary delay in arraignment, see 100 U. OF PA. L. REV. 136, 139 (1951).

[23] Ingram v. State, 252 Ala. 497, 42 So. 2d 36 (1949); State v. Folkes, 174 Ore. 568, 150 P. 2d 17, 25 (1944).

[24] 72 Sup. Ct. 141 (1951). See the concurring opinion of Jackson, J., in which Frankfurter, J., joined. "What was there to hurry about? . . . A small prosecuting office in a town where life is leisurely made a simple effort to go about its duty with convenient speed." *Id.* at 151.

[25] Gallegos v. Nebraska, 72 Sup. Ct. 141, 151 (1951).

[26] Reed, J., dissenting in Upshaw v. United States, 335 U. S. 410, 436 (1948).

often leads to the disclosure of the true criminal, and to the exoneration of an innocent suspect.[27]

The wavering status of the exclusionary rule of the *McNabb* case, and the varying interpretations thereof, indicate a need for a clearer definition of its boundaries. By declining to extend the rule to cases involving legal detention on another charge, the Court, it is submitted, correctly delimited its application. The result is commendable; the application of fixed exclusionary rules in cases where the accused is amply protected by constitutional provisions is to be discouraged. As stated by the Court: "An extension of a mechanical rule based on the time of a confession would not be a helpful addition to the rules of criminal evidence." [28]

LABOR LAW — COERCION OF RECOGNITION — JURISDICTION OF STATE COURTS TO ENJOIN.—Plaintiff department store sought to enjoin the defendant labor union from interfering with its business by maintaining picket lines. The alleged purpose of the picketing was to coerce the plaintiff to recognize the defendant as the sole bargaining agent of the plaintiff's employees, even though the defendant had not been certified as such. Under the state law, it would have been illegal for the plaintiff to recognize the defendant in this capacity while there were conflicting claims being asserted by rival unions and when no union had been certified by the National Labor Relations Board.[1]

Special Term dismissed the complaint holding that the subject matter falls within the purview of the National Labor Relations Act, and that jurisdiction is thereby vested exclusively in the federal tribunals. *Held,* reversed. The courts of New York have jurisdiction to enjoin peaceful picketing engaged in to accomplish an unlawful objective. The defendant's acts are not within the scope of the National Labor Relations Act. *Goodwins, Inc. v. Hagedorn,* 303 N. Y. 300, 101 N. E. 2d 697 (1951).

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[27] Inbau, *The Confession Dilemma in the United States Supreme Court,* 43 ILL. L. REV. 442, 448 (1948).

[28] Carignan v. United States, 72 Sup. Ct. 97, 102 (1951).

[1] ". . . there is no denying that it would be unlawful for the plaintiff employers to yield to a demand that they recognize the defendant union instead of some rival labor organization as the exclusive bargaining agent . . . in advance of a certification by the National Labor Relations Board in the pending representation proceeding." Goodwins, Inc. v. Hagedorn, 303 N. Y. 300, 305, 101 N. E. 2d 697, 699 (1951); N. Y. CONST. Art. I, § 17, "Employees shall have the right to organize and to bargain collectively *through representatives of their own choosing.*" (italics added); N. Y. LABOR LAW §§ 703, 704(3).