Supplementary Material

Chapter 5: The Jacksonian Era—Criminal Justice/Interrogations

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People v. McMahon, 1 E.D. Smith 384 (NY 1857)

McMahon was arrested for murdering his wife. During the coroner's inquest, he made several incriminating statements under oath. These statements were introduced at trial over McMahon's objection. After being convicted by the trial jury, McMahon appealed to the New York Supreme Court. The appeal was unsuccessful. McMahon then appealed his conviction to the Court of Appeals of New York.

The Court of Appeals of New York overturned McMahon's conviction. Judge Selden's opinion relied on the common law's skepticism of confessions. Selden emphasizes that confessions must be voluntary. How does he define voluntary? Why does he think that involuntary confessions are unreliable?

JUDGE SELDEN

Confessions and statements, made by persons charged with crime, have been very differently regarded by the civil and the common law. The former, reposing with confidence upon the assumption that one who is innocent will never admit that which tends to show guilt, treats the declarations and admissions of the accused as evidence of the most satisfactory kind. . . .

The common law . . . regards this species of evidence with distrust. It carefully scrutinizes the circumstances, and rejects the evidence if it sees that no safe inferences can be drawn from it. The first distinction which it makes is between a declaration or statement made before, and one made after, the accused was conscious of being charged with or suspected of the crime. If before, it is admissible in all cases, whether made under oath or without oath, upon a judicial proceeding or otherwise; but if made afterwards, the law becomes at once cautious and hesitating; the inquiry then is, was it voluntary? For unless entirely voluntary, it is held not to be admissible.

In order to apply this rule it is necessary to know what is meant by the term voluntary. The word is evidently not in all cases used in contradistinction to compulsory; because a confession obtained by either threats or promises, from any one having authority over the accused or concerned in the administration of justice, is uniformly held to be inadmissible. However slight the threat or small the inducement thus held out, the statement will be excluded as not voluntary. It is plain therefore that, in such cases at least, by voluntary is meant, proceeding from the spontaneous suggestion of the party's own mind, free from the influence of any extraneous disturbing cause.

The principle upon which this rule is based is obvious. It is, that we cannot safely judge of the relation between the motives and the declarations of the accused, when to the natural agitation consequent upon being charged with crime is superadded the disturbance produced by hopes or fears artificially excited. It is because it is in its nature unreliable, and not on account of any impropriety in the manner of obtaining it, that the evidence is excluded. . . .

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[A]ll extrajudicial statements and confessions of an accused party, when not regarded as voluntary, are excluded because they cannot be relied upon as evidence of guilt, and for no other reason. No *dictum* to the contrary can be found.

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It may well be doubted whether that celebrated maxim, *nemo tenetur prodere se ipsum* [no one is bound to betray himself] has itself any other substantial foundation than the uncertainty and doubt

which must ever attend all extorted confessions. If deserving of the commendation it has received, it must, I think, be based upon the idea of protection to the innocent, and not that of mercy to the guilty. But whatever may be the truth on this subject, I hold it to be clear, that when the law rejects a disclosure made under oath by a person charged with crime, it does so, not because any right or privilege of the prisoner has been violated, but because it is deemed unsafe to rely upon it as evidence of guilt. This is strongly to be inferred from that class of cases in which it has been held, that although a confession has been obtained by stratagem, by fraud, by violation of confidence or even of an oath, still, if reliable, the law will avail itself of it.

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Another rule which may now be regarded as settled is that the statement, although made under oath, and upon a judicial examination as to the crime, may still be admitted, if at the time it was made, the prisoner was not himself resting under any charge or suspicion of having committed the crime.

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. . . Here the prisoner, at the time he was called upon to testify, was under arrest by a public officer upon a suspicion of having committed the crime. There can, I apprehend, be no doubt that, had he been under arrest upon a warrant issued by the coroner or by a magistrate, under a direct charge of having committed the murder, the evidence must be excluded.

. . .

Assuming then, as I think I safely may, that it is the uncertain and unreliable nature of the evidence which excludes it, what difference does it make in principle whether the prisoner is in custody of the officer upon a warrant, or without warrant, the charge being the same in either case? Would the mental disturbance be any less in the one case than in the other? Clearly not. If, then, the main principle which I have endeavored to maintain is correct, it must of course follow, that the evidence in this case, if objected to, should have been excluded. . . .

However clear the proof of the prisoner's guilt in this case may be, it is better that the people should be put to the trouble of establishing it upon a second trial, than that the force of a salutary rule, upon which life may often depend, should be impaired. . . .

The judgment should be reversed and a new trial should be ordered.