

AMERICAN CONSTITUTIONALISM
VOLUME II: RIGHTS AND LIBERTIES
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Supplementary Material

Chapter 6: The Civil War and Reconstruction—Criminal Justice/Investigations and Interrogations

McGlothlin v. State, 42 Tenn. 223 (1865)

Gip McGlothlin, Gloster McGlothlin, and several other persons of color were charged with stealing gold and silver coins from Rebecca Wright. After their arrest, Gip McGlothlin and the others were repeatedly told, "It would be better for [you] to confess and tell all about it . . . that if [you do] not tell about it, [you will] go to the penitentiary, and probably be hung." Several persons arrested made confessions after hearing these comments. They repeated their confessions to a justice of the peace, even after the justice of the peace reminded them that "their statements could be used as evidence against them, and they were not bound to say anything against themselves." The statements were then introduced at trial. Gip McGlothlin, Gloster McGlothlin and several others were found guilty and sentenced to six years in prison. They appealed their conviction to the Supreme Court of Tennessee on the ground that the prosecutor could not constitutionally introduce their confessions at trial.

The Supreme Court of Tennessee reversed the convictions. Judge Hawkins ruled that confessions induced by hope of a lesser sentence were not admissible to prove the guilt of the defendant. Why does he reach that conclusion? Was plea bargaining possible in Tennessee after McGlothlin? Judge Hawkins did not claim that confessions may never be admitted into evidence. What were the constitutional uses of the confessions? How did Judge Hawkins distinguish between the constitutional and unconstitutional uses of confessions?

JUDGE HAWKINS delivered the opinion of the court.

...
... The law is well settled that admissions or confessions made under such circumstances are not admissible as evidence, even against the party making them; and much less can they be admissible against other persons; and in no instance, as we believe, has it ever been holden that confessions made by one party are admissible as evidence against another party. . . . It is true that confessions, made after promises or threats have been used, will be received as evidence, provided it is made clearly to appear that they exercised no influence over the mind of the accused, at the time the confession was made. A confession, to be received, must be freely and voluntarily made, and where the mind has been placed under restraints, by the flattery of hope or the terror of fear, for the purpose of forcing the accused to make a confession, it must appear that prior to the confession, it had become again free, and totally relieved from the influence of the hopes or fears, induced by the promises or threats which had been used, else the confession will not be admissible. But it will be observed that the statement of the justice to the prisoners does not contain one word, which indicated to them, that the fears or hopes which might have been engendered by the promises and threats made before that time, were groundless or delusive. What will or will not be sufficient to deprive the mind of its free volition, or, when once so deprived, to restore it again to freedom, must depend upon the circumstances surrounding the accused, his intelligence, mental capacity, etc., and when it is remembered that the threats and promises of those by whom the accused were surrounded were continued, from the time of the arrest, during the trial, during the times they were making the confessions, and up to the time of their conviction, it will scarcely be contended that the statement of the justice of the peace, could reasonably have had the effect to have restored their minds to perfect freedom, and to have entirely removed the influence of such threats and promises; and more especially when we remember, that the accused were ignorant negroes, who, amidst

the convulsive throes of one of the most terrible civil wars which the world has ever witnessed, had but recently been released from the yoke of bondage. . . .

Evidence of confessions is liable to a thousand abuses. They are generally made by persons under arrest, in great agitation and distress, when every ray of hope is eagerly caught at, and frequently under the delusion, though not expressed, that the merits of a disclosure will be productive of personal safety – in want of advisers, deserted by the world, in chains and degradation, their spirits sunk, fear predominant, hope fluttering around, purposes and views momentarily changing, a thousand plans alternating, a soul tortured with anguish, and difficulties gathering into a multitude. How uncertain must be the things which are uttered in such a storm of passion.

But it is insisted that, although the confessions may have been made under such circumstances as would render them inadmissible, yet they are made admissible, by the fact that they led to the discovery of the stolen money. . . . On this subject the rule is that so much of the confession as relates strictly to the fact discovered by it may be given in evidence; for the reason of rejecting extorted confessions is the apprehension that the prisoner may have been induced to say what is false, but the fact discovered shows that so much of the confession as immediately relates to it is true.

It was competent to prove that Gloster stated where the money might be found, and that the stolen money was found at the place indicated by him; and in that state of the case, that is all of the confession that is competent; and if he had stated, at the time, that he received it from some one else to conceal, knowing it was stolen, or himself had taken it from the jar in the smoke-house and put it there, that would be incompetent as evidence. There is no proof whatever to be found in the record against the prisoner, Charles Bunton, except in the statements of his co-defendants. The evidence entirely fails to establish that either of the plaintiffs in error had conspired or confederated with Hardy, or any one else, for the purpose of committing the larceny, or were either actually or constructively present, aiding, or for the purpose of aiding, in the accomplishment of the enterprise, or, in any manner, had any thing to do with it, or had any knowledge of the felonious purposes of Hardy, or even had any knowledge of the existence of the hidden treasure.



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