

COMMENTS

CONSTITUTIONAL LAW—DUE PROCESS—COERCED CONFESSIONS

Stein v. New York, 346 U.S. 156 (1953)

Three men were arrested for a killing which occurred during an armed robbery. Two of these men, both ex-convicts, were subjected to twelve hours of separate intermittent questioning during the one and one half days immediately following their arrests, after which both confessed. They had been held incommunicado and had been illegally detained.¹ At trial the confessions were admitted into evidence with instructions to the jury to determine their voluntariness and to disregard them if they found them to be coerced. The jury returned a general verdict of guilty, and the New York Court of Appeals affirmed without opinion.² On writ of certiorari, the defendants claimed that the conditional admission of the confessions constituted a denial of due process under the Fourteenth Amendment. The Supreme Court of the United States, with three judges dissenting in separate opinions, held that there was no denial of due process because there was not enough evidence to rule as a matter of law that the confessions were the result of coercion.³

The Supreme Court's power to reverse a state court which has admitted a coerced confession into evidence has been established for more than fifteen years.⁴ The Court, however, has not been as strict in reversing state convictions as it has been in reversing similar federal convictions.⁵ This power to reverse state court decisions rests on the due process clause of the Fourteenth Amendment and is limited to a review of the decision on the basis of the undisputed facts.⁶

Coercion can be psychological as well as physical,⁷ and there is no

1. N.Y. CRIM. CODE § 165 provides that a defendant must be taken before a magistrate without unnecessary delay.

2. *People v. Cooper*, 303 N.Y. 856, 104 N.E.2d 917 (1952).

3. *Stein v. New York*, 346 U.S. 156 (1953).

4. The first case of this type was *Brown v. Mississippi*, 297 U.S. 278 (1936).

5. See *McNabb v. United States*, 318 U.S. 332 (1943), where the Court based its decision on its duty to supervise the administration of criminal justice in the federal courts and not on the due process clause. The confessions were excluded because they were obtained during a period of illegal detention and not because they were coerced. This reasoning was later upheld in *Upshaw v. United States*, 335 U.S. 410 (1948), and is the law today in the federal courts.

6. *Stroble v. California*, 343 U.S. 181 (1952); *Gallegos v. Nebraska*, 342 U.S. 55 (1951); *Haley v. Ohio*, 332 U.S. 596 (1948); *Malinski v. New York*, 324 U.S. 401 (1945); *Ashcraft v. Tennessee*, 322 U.S. 143 (1944); *Lyons v. Oklahoma*, 322 U.S. 596 (1944); *Lisenba v. California*, 314 U.S. 219 (1941); *Chambers v. Florida*, 309 U.S. 227 (1940).

7. *Brown v. Mississippi*, 297 U.S. 278 (1936), was the first case in which the Supreme Court reversed a conviction based on a *physically* coerced confession. The first case in which the United States Supreme Court reversed a conviction on the sole ground of *psychological* coercion was *Chambers v. Florida*, 309 U.S. 227 (1940).

all-inclusive definition of coercion which can be applied with exactness.⁸ The court must instead examine the individual nature of the defendant in relation to the external conditions under which his confession was made.⁹ There are two major conflicting policies to be considered in making this examination: the elimination of the criminal element from our society,¹⁰ and the protection of the individual from improper police methods.¹¹ If one of these policies is given particular emphasis by the court, that emphasis may determine the weight given to the other factors that the court considers, and it may well determine the result in any particular case.

In *Malinski v. New York*,¹² the concept of the psychologically coerced confession reached its maximum development. In that case, the defendant, a man of average intelligence, was arrested, stripped, held incommunicado for ten hours, and subjected to intermittent questioning. The Court there reversed the conviction,¹³ basing the reversal primarily on a desire to curb improper police methods. The Court did not consider the degree of trustworthiness of the confession in reaching its decision.¹⁴ It would appear that what was considered to be psychological coercion in the *Malinski* case would not be held to be such under the principal case, which thus appears to be a with-

8. See Mr. Justice Frankfurter's concurring opinion in *Haley v. Ohio*, 332 U.S. 596, 606 (1948).

9. The age, health, intelligence, and race of the defendant are considered in light of attendant circumstances such as the duration of detention, length of questioning, accessibility of friends and counsel, threats or promises, hostility of the questioners, use of relays of officials to pursue the questioning, physical abuse, and improper lighting techniques during the questioning. *Haley v. Ohio*, 332 U.S. 596 (1948). See *Ashcraft v. Tennessee*, 322 U.S. 143, 162 (1944) (dissenting opinion).

10. *Stein v. New York*, 346 U.S. 156, 196-197 (1953). Justices Jackson and Reed seem to give considerable weight to this policy. See the dissenting opinions of Mr. Justice Jackson in *Turner v. Pennsylvania*, 338 U.S. 62, 66 [57] (1949), *Ashcraft v. Tennessee*, 322 U.S. 143, 156 (1944), and his concurrence with Mr. Chief Justice Stone, dissenting, in *Malinski v. New York*, 324 U.S. 401, 434 (1945). See also the majority opinions of Mr. Justice Reed in *Gallegos v. Nebraska*, 342 U.S. 55 (1951), and *Lyons v. Oklahoma*, 322 U.S. 596 (1944).

11. *Stein v. New York*, 346 U.S. 156, 207 (1953) (dissenting opinion of Mr. Justice Douglas). Justices Douglas and Black seem to give considerable weight to this policy, and are particularly opposed to the admission of confessions obtained during periods of illegal detention. See the dissent of Mr. Justice Douglas with Mr. Justice Black concurring in *Stroble v. California*, 343 U.S. 181, 203 (1952). See also the dissents of Mr. Justice Black with Mr. Justice Douglas concurring in *Gallegos v. Nebraska*, 342 U.S. 55, 73 (1951), and *Lisenba v. California*, 314 U.S. 219, 241 (1941).

12. 324 U.S. 401 (1945).

13. After the defendant's confession, arraignment was delayed and that fact together with the closing remarks of the prosecuting attorney which in effect admitted improper police procedure influenced the Court in reversing the conviction. *Id.* at 406-407.

14. See 3 WIGMORE, EVIDENCE § 822 (3d ed. 1940), where it is stated that the trustworthiness concept is the basic reason behind the rule. *But see* *Lisenba v. California*, 314 U.S. 219, 236 (1941), where Mr. Justice Roberts, speaking for the Court, said: "The aim of the requirement of due process is not to exclude presumptively false evidence, but to prevent fundamental unfairness in the use of evidence, whether true or false."

drawal from the *Malinski* holding and seems to limit the scope of psychological coercion.¹⁵ The dissenters resisted this withdrawal on the ground that the confession should have been held coerced as a matter of law.

If a confession is held coerced as a matter of law by the trial court it is excluded from the consideration of the jury. If the confession is not held coerced as a matter of law, under the orthodox view coercion is only a factor to be considered by the jury in determining the credibility of the confession.¹⁶ Under a more recent view, however, the jury should completely disregard the confession if they find coercion.¹⁷ If the jury is allowed to consider the confession and returns a general verdict of guilty with no showing that it disregarded the confession, the appellate court should reverse the conviction if it finds that the confession was coerced as a matter of law and should not have been submitted to the jury by the trial court.¹⁸ There should be reversal even if there was other evidence in the case sufficient to support a conviction since it is impossible for the appellate court to determine whether the jury based its decision on the confession or on the other evidence.¹⁹

Another ground of the dissenters was that the majority incorrectly stated that the conviction should stand even if the confessions were held to be coerced as a matter of law, since there was other evidence sufficient to support the conviction.²⁰ The majority did not so state. Mr. Justice Jackson in the opinion of the Court said by way of dictum that the admission in evidence of a coerced confession would not require automatic acquittal of the defendants;²¹ it would require only a reversal. The dissenters seem to have misconstrued this dictum.²²

15. But see note 13 *supra*.

16. 3 WIGMORE, EVIDENCE § 861 (3d ed. 1940).

17. *Ibid.*

18. *Malinski v. New York*, 324 U.S. 401 (1945).

19. *Ibid.*

20. *Stein v. New York*, 346 U.S. 156, 201 (1953), where Mr. Justice Frankfurter, dissenting, said:

Unless I am mistaken about the reach of the Court's opinion, and I profoundly hope that I am, the Court now holds that a criminal conviction sustained by the highest court of a State, and more especially one involving a sentence of death, is not to be reversed for a new trial, even though there entered into the conviction a coerced confession which in and of itself disregards the prohibition of the Due Process Clause of the Fourteenth Amendment.

21. "This Court never has decided that reception of a confession into evidence, even if we held it to be coerced, requires an acquittal or discharge of a defendant." *Id.* at 189.

22. See *Giron v. Cranor*, 116 F. Supp. 92 (E.D. Wash. 1953). The case is similar to the principal case. The defendant was tried for murder and the issue of voluntariness of the confession obtained was submitted to the jury which returned a general verdict of guilty. A habeas corpus proceeding challenged the voluntary aspect of the confession and the court held it coerced. The State, relying on the *Stein* case, contended that the conviction should still stand since there was other sufficient evidence on which to convict. Driver, J., held that the State had misinterpreted the *Stein* decision and that the defendant should either be released or granted a new trial.

The Court has never held that a coerced confession can be used as evidence on which to base a conviction, nor does it do so in the principal case.²³

There is a need for more definite criteria to determine the coercion issue. The lack of definition seems to stem from the fact that the Court cannot agree on the comparative weight to be given to the right of the public to have criminals eliminated from society and the right of the individual to be free from improper police procedure. Perhaps the state legislatures should adopt an acceptable standard, such as the rule employed in federal cases.²⁴

CORPORATIONS—POWERS—CHARITABLE CONTRIBUTIONS

A. P. Smith Manufacturing Co. v. Barlow, 98 A.2d 581 (N.J. 1953)

A New Jersey corporation engaged in manufacturing and selling water and gas equipment resolved to contribute \$1,500 to Princeton University's general maintenance fund. Minority stockholders objected that the contribution was *ultra vires*, and the corporation instituted an action for a declaratory judgment. The lower court held that the act was not *ultra vires* because the contribution was as a matter of law a direct benefit to the corporation.¹ On appeal the lower court's judgment was affirmed on the ground that reasonable charitable contributions by corporations, even if there had been no express statutory provision,² are within the corporation's implied and incidental powers under common law principles.³

American cases have consistently held that a non-charitable corporation is formed to transact business to obtain the maximum profits for its stockholders and not to make philanthropic contributions.⁴ Unlike a natural person, a corporation does not have the power to make donations for the benefit of mankind in general.⁵ A corporation

23. The procedure in New York, as in many other states, is to submit the confession to the jury for judgment on the coercion issue. If the jury rejects the confession, then it cannot enter into the verdict and the conviction must stand on the basis of other sufficient evidence. Thus, the confession does not enter into the evidence on which the conviction is based. If Mr. Justice Jackson felt that a confession coerced as a matter of law could enter into the conviction, he would not have considered the question of coercion, but would merely have decided that there was sufficient other evidence on which to convict. His lengthy (4 pages) consideration of the question of coercion shows that this was not his view.

24. See note 5 *supra*.

1. 97 A.2d 186 (N.J. 1953).

2. N.J. STAT. ANN. § 14: 3-13.2 (1950). See note 14 *infra*.

3. 98 A.2d 581 (N.J. 1953).

4. *Dodge v. Ford Motor Co.*, 204 Mich. 459, 170 N.W. 668 (1919). The sole function of a non-charitable corporation is to make a profit. *BALLANTINE, CORPORATIONS* 228 (Rev. ed. 1946).

5. An individual and a corporation are not to be equated under all circumstances. *STEVENS, CORPORATIONS* 218 (1936). Contributions resulting in benefits which are to be enjoyed substantially by the general public are not to be considered incidental to the purpose for which the corporation is chartered, and hence would be *ultra vires*. *Dodge v. Ford Motor Co.*, 204 Mich. 459, 170 N.W. 668 (1919).