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Evidence - Confessions - Admissibility When Obtained by Trickery

Theodore J. Boutrous

CASE NOTES

EVIDENCE—CONFESSIONS—ADMISSIBILITY WHEN OBTAINED BY TRICKERY. In effecting a planned escape, D struck two blows on the prison foreman's head. The following evening the prison foreman died from a fractured skull caused by the blows. About 46 hours after their escape D and a fellow prisoner were apprehended and returned to the prison. After changing clothes, D, without force, threat, or promise of benefit, signed a written statement admitting that he struck the fatal hammer blows. Three days later D made and signed a similar statement. The defense objected to the admission of the written statements in evidence, on the ground that they were obtained by fraud in that D was not told and had no knowledge of the foreman's death at the time he signed the statements. D was convicted of murder and on appeal it was held that the judgment be affirmed. The statements were admissible. The use of artifices, fraud or deception to obtain a confession does not render it inadmissible if the means employed are not calculated to procure an untrue statement. *State v. Hoffer*, (Iowa 1947) 28 N.W. 2d 475.

If the natural tendency of the deceit or trickery is to elicit truth, confessions thus obtained are admissible in evidence. *People v. Dunnigan*, 163 Mich. 349, 128 N.W. 180, 31 L.R.A. (N.S.) 940 (1910); *People v. Connelly*, 234 Pac. 374, 195 Cal. 584 (1925); *State v. Lander*, 21. S.D. 606, 114 N.W. 717 (1908); *State v. Staley*, 14 Minn. 105 (Gil. 75) (1869). The courts have allowed the admission of confessions obtained by the following frauds upon the accused: declaration made by a jailor to a prisoner, "that if the commonwealth should use any of them as witnesses he supposed it would prefer her to either of the others,"*Fife v. Commonwealth*, 29 Pa. 429 (1857); by application of a lie detector, *Commonwealth* v. *Hipple*, 3A2d 353 (1939); by false statements that accomplice has confessed and had implicated the accused, *Osborn v. People*, 83 Colo. 4, 262 Pac. 892 (1927), *Commonwealth v. Green*, 20 N.E. 2d 417 (Mass. 1939); by promise of secrecy, *State v. Darnell*, 1 Houst. 322 (Del. 1870); by false statements as to the amount of incriminating evidence against accused, *Lewis v. United States*, 74 F. 2d 173 (1935); by making accused drunk, *State v. Hopkirk*, 84 Mo. 278 (1884); by deceit in confining detective in jail with accused, *People v. Lipsczinska*, 212 Mich. 484, 180 N.W. 617 (1920); by pretending to be a friend of the accused, *People v. White*, 68 N.E. 630 (N.Y. 1903); by pretended power of divination, *Denmark v. State*, 95 Fla. 757, 116 So. 757 (1928); by sheriff securing incriminating letter from accused in bad faith, *Sander v. State*, 113 Ga. 267, 38 S.E. 841; by pretending knife produced by officer belonged to accused and was the one used in the murder, *Commonwealth* v. *Cressinger*, 193 Pa. St. 326, 44 Atl. 433 (1899); and by taking advantage of the superstition of an infirmed and diseased old woman, *State v. Harrison*, 115 N.C. 706, 20 S.E. 175 (1894). However, in so far as the trick involves a promise or threat which would tend to produce an untrue statement, it would operate to make the confession non-admissible, *White v. State*, 70 Ark. 24, 65 S.W. 937 (1873). In the use of confessions in evidence, the production of the truth is the goal of all courts. One of the basic reasons for excluding involuntary confessions is the probability that they are untrue. Seldom, if ever, will fraud or trickery which is not based on coercion, threat of

injury, or promise of benefit, produce an untrue statement. Nevertheless, to prevent the frustration of the attorney-client relation, there should be one exception to the general rule that the use of artifice or fraud in obtaining a confession does not operate to exclude unless its tendency is to produce an untruth, and that is the case where confidential communications are elicited by one pretending to be the accused's attorney or an agent of the accused's attorney. If the relationship of attorney and client is the inducing cause of the confession, it should be excluded whether the person assuming to act as such is an attorney or not, *People v. Barker*, 60 Mich. 277, 27 N.W. 539 (1886). The protection of the attorney-client privilege is worth more to society than is the bringing to justice of an occasional criminal who might otherwise escape punishment. Naturally, the credibility and weight to be given the testimony of a witness who, by deceit or fraud has obtained an alleged confession from a prisoner in such a manner as described above, is for the jury, who should be especially instructed on this point, *Heldt v. State*, 20 Neb. 492, 30 N.W. 626, 57 Am. Rep. 835 (1886); *Burchett v. State*, 35 Ohio App. 463, 172 N.E. 555.

FRANCIS E. FOUGHTY,
Second Year Law Student,
University of North Dakota.

GIFTS—CAUSA MORTIS—VALIDITY OF GIFT ON CONDITION PRECEDENT. This was an action to obtain possession of certain items of personal property consisting of cash, a check, and postal savings certificates and corporate stock certificates payable to the deceased donor but not endorsed or assigned. The deceased delivered the items of personal property involved to the plaintiff by placing a parcel containing the property on a show case in the plaintiff's store and saying, "Here is a parcel and you keep it, and if I don't come back, you can have it." At the time of the delivery of the parcel, the deceased knew he was seriously ill with the disease which caused his hospitalization the next day and which shortly thereafter was responsible for his death. The trial court found that the deceased delivered the parcel intending a gift to the plaintiff and that the deceased died without revoking it. It was ordered that these items be delivered to the plaintiff as the donee of the gift and on appeal it was *held* that the judgment be affirmed. The facts show that the requirements of a gift causa mortis have been met. The condition precedent, upon which the delivery was made, did not affect its validity because it expressed only that which the law implies. *In re Nol's Estate*, 251 Wis. 90, 28 N.W. 2d 360 (1947).

To constitute a valid gift causa mortis, there are four necessary elements: an intention to make a gift effective at death; the gift must be made with a view to the donor's death from present illness or from an external and apprehended peril; the donor must die of that ailment or peril; there must be a delivery. *Grymes v. Hone*, 49 N.Y. 17 (1872), *Hoks v. Wollenberg*, 209 Wis. 276, 243 N.W. 128 (1932). In the principal case, the question that we find propounded is whether a gift causa mortis is valid when made in terms of death as a condition precedent rather than as a condition subsequent. An important early decision upholding the principal case was that handed down in *Hatcher v. Buford*, 60 Ark. 169, 29 S.W. 641 (1895), in which the court said that the better doctrine

on transfer of the title to a gift causa mortis is that which recognizer the subject matter of the gift as becoming the property of the donee in the event of the donor's death; that is, the donor's death is a condition precedent to the vesting of the title to the thing given in the donee. In a still earlier decision, *Thomas v. Lewis*, 89 Va. 1, 15 S.E. 389 (1892), the court went so far as to uphold a gift causa mortis in terms of death as condition precedent in spite of the fact that there was a reservation of control by the donor. Other supporting cases are *Johnson v. Cooley*, 101 Va. 214, 44 S.E. 721 (1903); *Adm'r v. Maurer*, 69 Wis. 576, 34 N.W. 926 (1887); *In re Elliott's Estate*, 312 Pa. 493, 167 A. 289 (1933). The contrary view upon the question is supported by such authority as *Basket v. Hassel*, 107 U.S. 602, 2 S. Ct. 415 (1882), in which the donor, during his last sickness, and in the apprehension of death, indorsed the following upon a certificate of deposit: "Pay to Martin Basket . . . no one else, then not till my death. My life seems to be uncertain, I may live through this spell, then I will attend to it myself." Although delivered, this was held not to be a gift causa mortis on the grounds that death as a condition precedent to the vesting of title in the donee created a reservation of control that resulted in a defeasance of the gift. In that decision, they stated that a gift made to take effect upon death is a testamentary disposition and that therefore a gift so conditioned is invalid. The court also held that in order to be valid such a gift must pass title in praesenti upon the conditions subsequent of revocation and other happenings which have been held to defeat it. In accord with this view are *Logenfield v. Richter*, 60 Minn. 49, 61 N.W. 826 (1895); *Dunn v. German-American Bank*, 109 Mo. 90, 18 S.W. 1139 (1891); and *Schultz v. Becker*, 131 Wis. 235, 110 N.W. 214 (1907). In North Dakota, though no decisions on the specific question involved in the instant case were found, both of the above views seem to be recognized but probably the theory of the *Basket Case* is the prevailing one. See *Zuber v. Erickson*, 58 N.D. 322, 226 N.W. 510 (1929); *Rosenau v. Merchants*, 56 N.D. 123, 216 N.W. 354 (1911). A close analysis of the problem indicates that what the court in the *Basket Case* held to be a testamentary disposition was in all probability a gift causa mortis with the donor's death a condition precedent to the vesting of the title in the donee and this view is supported by the most recent decisions on the question. *Hoks v. Wollenberg*, 209 Wis. 276, 243 N.W. 219 (1932); *Thomas v. First Nat. Bank of Danville*, 166 Va. 497, 186 S.E. 77 (1936); and *Wilson v. Wilson*, 204 S.W. 2d 479 (1947). From a practical viewpoint, is seems immaterial whether the title to the gift was intended to vest finally by fulfillment of a condition precedent or through compliance with a condition subsequent because in either case the disposition is in a broad sense of the word testamentary. Actually, it appears that the doctrine of gifts causa mortis is an exception in the law of wills permitting a man to dispose of personalty without the formalities of a written testament, and a gift so made is recognized because it is felt that delivery is an adequate safeguard against the abuses at which the Statute of Wills is aimed. Bordwell, *Testamentary Dispositions*, 19 Ky. L. J. 281, 286 (1931).

THEODORE J. BOUTROUS,
Third Year Law Student,
University of North Dakota.