

CRIMINAL LAW --- CONFESSIONS --- REASONABLE DOUBT SHOULD BE THE BURDEN UPON THE STATE IN A PRETRIAL DETERMINATION OF ADMISSIBILITY. State v. Yough, 49 N.J. 587, 231 A. 2d 598 (1967)

Thomas LeRoy Yough, an eighteen-year-old high school junior, was arrested for the fatal mugging of James Disney, a vagrant. While in custody, he was advised of his constitutional right to remain silent and of his right to counsel. Subsequently, he gave an incriminating statement which was reduced to writing and signed by him. After an indictment was returned charging him with murder, his state-appointed counsel moved for a pretrial determination and order to exclude the statement. During the hearing, testimony was admitted by the court pertaining to the defendant's background. The trial court concluded that the defendant lacked sufficient capacity to waive his constitutional rights intelligently. The decision was predicated on consideration of defendant's age, educational history, and psychological motivation. The court felt that the State had not proved beyond a reasonable doubt that the defendant had "knowingly and intelligently" waived his privilege against self-incrimination and his right to counsel.

Pursuant to R.R. 1:2-4 (c), the State was granted permission to file an interlocutory appeal. Held, reversed and remanded. The New Jersey Supreme Court found, as a matter of fact, that the State had proved beyond a reasonable doubt the defendant's intelligent waiver. Although the court in its opinion concluded that proof to a preponderance of the evidence is a more acceptable criterion to judge the competency of a voluntary statement, "the safer course"¹

1. 49 N. J. at 601, 231 A. 2d at 605.

would be to require proof beyond a reasonable doubt before statements are admissible in criminal proceedings.

There can be no doubt that every individual in a free society should be afforded the broadest protection against involuntary self-incrimination.

Grounded in the Fifth Amendment privilege, the basic aim of the courts is to insure that every statement used against an accused is voluntarily made. It is with this goal in mind that the United States Supreme Court has been building a pyramid of constitutional safeguards.²

Here the issue is evidentiary, the admissibility of a challenged confession. Each trial court must make explicit findings that the statement was given voluntarily and only after required constitutional warnings were communicated to, and intelligently waived by the defendant. While all relevant evidence and circumstances surrounding the taking of the statement are to be considered

2. See, *McNabb v. United States*, 318 U.S. 332, 63 S. Ct. 608 (1943) (statement taken after an unreasonable delay in bringing to an arraignment is not admissible); *Mallory v. United States*, 354 U.S. 449, 77 S. Ct. 1356 (1957), (exclusion of a statement because it was given while defendant was held prior to a delayed arraignment); *Escobedo v. Illinois*, 378 U.S. 478, 84 S. Ct. 1758 (1964), (once the investigation turns from investigatory to accusatory and is focused on the accused the refusal to honor the accused's request to consult with his attorney is violative of the Sixth and Fourteenth Amendment); *Massiah v. United States*, 377 U. S. 201, 84 S. Ct. 1199 (1964), (statement given after indictment in the absence of counsel is found violative of the Sixth Amendment right to assistance by counsel); *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602 (1966), once the investigation focuses on the accused, he is constitutionally entitled to be warned of his right to remain silent, his right to the presence of his counsel and his right to have the court appoint counsel if he cannot afford one.

by the jury in determining the weight to be given the evidence, the jury has no function in reference to its admissibility.³

In conducting the preliminary determination, the Supreme Court in *Miranda v. Arizona*,⁴ has stated that there is a "heavy burden" upon the State to prove voluntariness. The significance of the Yough case lies in the interpretation to be afforded to the words "heavy burden".

"Heavy burden" may not be, in and of itself, legally definable. What is a "heavy burden"? Is it proof to a preponderance of the evidence or proof beyond a reasonable doubt? Or, did the court mean to create a new standard?

California, in Section 1096 of the Penal Code, defines reasonable doubt thus: "It is not a mere possible doubt, because everything relating to human affairs, and depending on moral evidence, is open to some possible or imaginary doubt. It is that state of the case, which, after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that condition that they feel an abiding conviction, to a moral certainty, of the truth of the charge." Basically, New Jersey has accepted and utilized this statutory definition.⁵ Although incapable of precise definition, reasonable doubt as a standard, compared to preponderance of the evidence, commands the severest quantum of proof.

3. See *Jackson v. Denno*, 378 U.S. 368, 84 S. Ct. 1774 (1964)

4. 384 U. S. at 475, 86 S. Ct. at 1641.

5. *State v. Brezina*, 45 N. J. Super 596, 133 A. 2nd 366 (App. Div. 1957); see also, 1 Underhill's Criminal Evidence, (5th Ed. 1956) § 25 and cases cited therein.

The term, by a preponderance of the evidence, has also been the subject of considerable conflict and confusion.⁶ Basically, the definition of the degree of proof necessary to sustain such a standard leads one to resort to an analysis of probabilities, but it is exceedingly difficult for a court to properly impress upon a jury of laymen the quantum and quality of proof required to meet each of these semantic considerations. Should this confusion now be imported into the task of a judge in evaluating the voluntariness of a confession? The Court in Clifton v. United States⁷, reasoned that to place the high standard upon the judge is to downgrade the jury as the trier of the fact, "... which limits them to resolving only those fact issues which can be safely entrusted to their collective judgment." There is no logical reason for the court to require more than sufficient evidence to convince itself that the State had in fact conformed to constitutional mandates. A finding of probative facts not grounded in speculation or conjecture amply affords the basis for a procedural rule governing the admissibility of evidence.

The decisions interpreting "heavy burden" polarize about the orthodox standard of beyond a reasonable doubt or a mere preponderance of the evidence. The Federal Courts of Appeal are in direct conflict. Inman v. United States⁸, was a criminal prosecution for the interstate transportation of a stolen vehicle. The government sought to introduce an incriminatory statement made by the defendant. The statement was excluded when the government failed to prove

6. IX Wigmore on Evidence, (3rd Ed. 1940) § 2498.

7. 371 F. 2d 354, 350 (D.C. CIR. 1966).

8. 352 F. 2d 954 (4th CIR. 1965).

beyond a reasonable doubt that the statement was voluntarily given. In Clifton v. United States, supra, defendant, serving a sentence under a multiple offender act, sought by writ of coram nobis to test the validity of a prior conviction based in part upon his allegedly involuntary statement. The court in reviewing the evidence found that it was legally competent as evidence when the State proved by a preponderance of the evidence that the statement was voluntarily obtained.

A definitive solution to this problem, which is beginning to plague State and Federal courts throughout the nation, is needed.⁹ The Fifth Amendment safeguards an important complex of values, but it is difficult to perceive how the application of the most stringent evidentiary standard would mitigate the effectiveness of the amendment's protection of an individual's right against self-incrimination. A preliminary determination by a judge is merely the vehicle for the prosecution to furnish assurances of fairness. The jury decides the guilt or innocence of the accused.

Regardless of its crucial nature, a confession as evidence does not require individuality of treatment; its competence as evidence should be predicated upon standards reserved for admission of evidence and not upon the standard reserved for the finding of the substantive elements of the crime.

9. Compare, *People v. Golson*, 32 Ill. 2d 398, 207 N.E. 2d 68, (1965), holding that the admissibility of a confession is to be decided by the trial court, and that the court is not required to be convinced of its voluntary character beyond a reasonable doubt. *People v. Huntley*, 15 N.Y. 2d. 72, 204 N.E. 2d 179, 183 (1965), holding that the judge must find voluntariness beyond a reasonable doubt before the confession can be admitted into evidence.

The American Law Institute Model Penal Code tentative draft No. 4, 1955, P 7, 108-111, sets forth the general requirements of "every offense". In Section 1.14 (9) it is defined thus; such conduct or such attendant circumstances or such a result or conduct as (a) is included in the definition of the offense, or (b) establishes the required culpability, or (c) negates an excuse or justification of such conduct, or (d) negatives a defense under the statute of limitations, or (e) establishes jurisdiction or venue. Thus in establishing the criminality of defendant's conduct, a higher degree of proof is necessary than would be required to satisfy a procedural device seeking to test the competency of evidence. The United States Supreme Court cases generously afford defendants constitutional protection.¹⁰ While he has the right to be protected against the use of coerced confessions, a requirement of production of more than sufficient evidence to support a finding that the statement was not coerced, and that the individual had intelligently waived his constitutional rights, is an unwarranted exaction in the name of constitutional guarantees. It is all the more surprising on a "safer course" basis.

10. Supra note 2.