Criminal Law -- Confessions

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NOTES AND COMMENTS

Criminal Law—Confessions*

Three youths, who were sought for murder and attempted robbery in North Carolina, were located in a Virginia jail by North Carolina county officers and representatives of the State Bureau of Investigation. The boys were questioned several times; and twelve days after they had been found, they confessed in the presence of a dozen officers and witnesses from North Carolina, including the solicitor of the twelfth judicial district. At the voir dire the youths testified that they were induced to confess by the statements of the solicitor that "...he was going to put this bill of indictment for second degree murder which carried a penalty of 25-30 years in our home state and at most, in all probability, we

* Supplementing Coates, Limitations on Investigating Officers (1937) 15 N. C. L. Rev. 229 at 233-236.
would be out in five years. . . .” The officers denied having made any offers or inducements, and the solicitor stated that he went to Virginia purposely to insure that no unfair methods were employed in gaining information. A State Bureau of Investigation agent testified that part of his “scheme” was to tell the boys that under the law of Virginia they were liable to the death penalty; and in reply to queries from the youths about the first and second degree murder charges, he answered that a first degree charge would be drawn and what would happen to them would be left to the jury and the court. It was further testified that another State Bureau of Investigation agent told the boys “. . . I can’t understand why an intelligent young man like you, can’t see the difference in twenty-five to thirty years in your home state and life imprisonment at the best in another state than your own.” The trial judge asked the prosecuting counsel if they could explain why these young men, after continually stating that they had nothing to say, should suddenly say “. . . I want to make a statement that will hang me,” but no explanation was offered. The trial court, nevertheless, ruled that the confession was voluntary, and the boys were convicted of first degree murder. On appeal to the Supreme Court, in a four to three decision, it was held that the confessions were involuntarily gained and were improperly admitted in evidence.

In this discussion the role of confessions in the law of evidence will be developed in the following manner: (1) The value of confessions; (2) voluntary confessions; (3) involuntary confessions; (4) second confessions; (5) confessions of third parties; (6) evidence uncovered by involuntary confessions and (7) procedural problems.

THE VALUE OF CONFESSIONS

In 1797 the Supreme Court refused to uphold a conviction for the capital crime of horse stealing based upon a voluntary confession which was the sole evidence, and it was stated that: “A confession, from the very nature of the thing, is a very doubtful species of evidence, and to be received with great caution. It is hardly to be supposed that a man perfectly possessed of himself, would make a confession to take away his own life.” However, voluntary confessions were accepted as corroborative evidence, and in 1847 the court in State v. Cowan shifted to the view that a prisoner could be convicted of a capital crime upon his own unbiased and voluntary confession without any other evidence.

VOLUNTARY CONFESSIONS

Throughout all the cases the idea has been reiterated that a free

1 State v. Biggs, 224 N. C. 23, 29 S. E. (2d) 121, 122 (1944).
2 Id. at 26, 29 S. E. (2d) at 122.
3 Ibid.
4 State v. Long, 2 N. C. 456 (1797).
5 29 N. C. 239 (1847); accord, State v. Hardee, 83 N. C. 619 (1880).
and voluntary statement deserved the highest credit because it was presumed to flow from a strong sense of guilt, but that any statement wrung from the mind by the flattery of hope or torture of fear or promise of reward would merit no consideration since it was the least reliable statement of all.

In determining whether a confession has been given voluntarily there have been several well-established principles laid down. The mere fact that the accused is under arrest, in the custody of officers, or in jail at the time of the alleged confession has been held not to invalidate the confession. Nor do officers have to take the caution to advise the accused of his right not to speak, as required by the statute when accused is examined by a magistrate, as a condition precedent to the acceptance as voluntary any statement made by an accused; that statute being applicable only to preliminary examinations before magistrates. Furthermore, the fact that the officers were armed when the confession was made has been held not to invalidate it, and the case is even stronger where the accused made fun of the arms by calling them "pop guns." Although the prisoner had been wounded by the officers who had him in custody and to whom he made the confession, it was held voluntary upon the showing that on the journey to jail the officers treated him kindly and he had no subsequent fear of them. In State v. Bridges the accused was arrested, handcuffed, and being driven to jail in an automobile when an officer suddenly turned around, turned a flashlight into the prisoner's face and asked why he had committed the murder. The reply was held to be a voluntary confession. Two other

6 State v. Smoak, 213 N. C. 79, 195 S. E. 72 (1937); State v. Jones, 203 N. C. 374, 166 S. E. 163 (1932); State v. Bowden, 175 N. C. 794, 95 S. E. 145 (1918); State v. Christy, 170 N. C. 772, 72 S. E. 499 (1915); State v. Cooper, 170 N. C. 719, 87 S. E. 50 (1915); State v. Lance, 166 N. C. 411, 81 S. E. 1092 (1914); State v. Drakeford, 162 N. C. 667, 78 S. E. 308 (1913); State v. Wright and Harriston, 61 N. C. 486 (1868); State v. Gregory, 50 N. C. 315 (1858); State v. Scates, 50 N. C. 420 (1858); State v. Jefferson, 28 N. C. 305 (1846).

7 State v. Tate, 210 N. C. 613, 188 S. E. 91 (1936); State v. Stefanoff, 206 N. C. 443, 174 S. E. 411 (1934); State v. Grier, 203 N. C. 586, 166 S. E. 387 (1932); State v. Gray, 192 N. C. 594, 135 S. E. 535 (1926).

8 State v. Wagstaff, 219 N. C. 15, 18 S. E. (2d) 657 (1940); State v. Jones, 145 N. C. 466, 59 S. E. 353 (1907); State v. Bohanon, 142 N. C. 695, 55 S. E. 797 (1906); State v. Exum, 138 N. C. 600, 50 S. E. 263 (1905); State v. Flemming, 130 N. C. 688, 41 S. E. 549 (1902).

9 N. C. GEN. STAT. (1943) §15-89: "The magistrate shall then proceed to examine the prisoner in relation to the offense charged. Such examination shall not be on oath; and before it is commenced, the prisoner shall be informed by the magistrate of the charge made against him, and that he is at liberty to refuse to answer any question that may be put to him, and that his refusal to answer shall not be used to his prejudice in any stage of the proceedings."


13 State v. Horner, 139 N. C. 603, 52 S. E. 136 (1905).

interesting variations are found in *State v. Conly*\(^15\) where the defendant was found hiding under his bed, and when told by a police officer that a certain man was dead, voluntarily stated that he “aimed” to kill him; and *State v. Jones*\(^16\) where the defendant, while running down the street carrying a gun, was chased by a policeman who asked him why he had shot his wife. The confession made under those circumstances was held to be voluntary.

The addition of handcuffs\(^7\) or tying of hands, if tying is not painful,\(^8\) to the fact of arrest does not make the confession involuntary. In *State v. Rodgers*\(^9\) the accused was tied during his appearance before a magistrate, and it was held that this was not sufficient to cause the confession to be involuntary, although the court censured this practice before a magistrate.

Crowds assembled about the place where the prisoner is being detained. If it has been shown that the prisoner heard none of the threats being made,\(^20\) or if the officer in charge placed himself between the crowd and the prisoner and the confession was not made until a subsequent day,\(^21\) is held not to be a fact which would invalidate the confession. In *State v. Daniels*\(^22\) a crowd was assembled at the train from which the prisoner stepped. When the prisoner showed great fear and asked the sheriff not to let the crowd hurt him, the sheriff verbally reassured his safety and asked the circumstances of the crime; whereupon, the prisoner confessed. The ruling that this confession was voluntary appears to have entirely overlooked both the state’s and defendant’s testimony.

Statements made to an officer in response to his exhortation for the prisoner to “...tell the truth,”\(^23\) or “...if you want to go ahead—tell me the truth, I will appreciate it,”\(^24\) or “... this is a very serious matter, and I presume you know what it is about. It is about this man that has been hit at the warehouse”\(^25\) have been held voluntary. Interesting cases involving exhortatory statements which produced confessions are *State v. Hudson,*\(^26\) where a witness told the defendant to keep his mouth shut and pray, and to the contrary, the defendant confessed,
and *State v. Patrick.* In the latter case a slave was forced by a witness to fit his shoe into a track, and then the witness said, "... you might as well tell all about it... for I am satisfied... if you belonged to me, I would make you tell." A short time later the slave called the witness aside and confessed; and the court, in holding the confession voluntary, *strangely* enough said that the statement of the witness, "if you belonged to me I would make you tell," carried with it the *assurance* that the witness would inflict no suffering upon the defendant. An unusual interpretation is to be found in *State v. Hawkins* where the sheriff told a prisoner that he was on the spôt and that the only way out was to plead insanity, to which the prisoner replied that he would never do it. The court here said that if the statement made by the sheriff were an accusation, then the words replied by the prisoner were not an admission; and that if the answer could be interpreted as a confession, it was voluntary and therefore admissible in evidence.

The fact that prior to the confession the prisoner was shown clothing which the accuser had said her attacker wore, and that subsequent to such showing the defendant confessed has been held not to invalidate a confession. In *State v. Saunders,* a former slave, while tied, was carried to the accuser's house. There, in the presence of five white men, he was confronted with the clothing he had supposedly stolen and was asked where he got them. The court upheld the decision of the trial court that this was a voluntary confession; but, under the facts as stated, it is difficult to understand on what basis this decision was made.

Mistaken belief was not sufficient reason to cause confession to be involuntary where a prisoner confessed to rape without knowing that the penalty for the crime to which he had confessed was hanging or where the confession was gained by talk made to a cell-mate who promised not to tell and who assured the defendant that one criminal could not testify against another. However, this type of holding appears unjust in the case where an aged and sick woman was induced to confess, to the procurement of an agent to murder her husband, by the words of a private detective that he was a right good old "monger doctor" who could "work roots" and "gummer folks," and he would give her something so that she wouldn't get caught if she would tell him about it. The court's reasoning that the promise to protect by witchery, although it was an artifice resorted to in order to ascertain the truth, offered no temptation in the contemplation of law, to an innocent

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person to pretend that he was guilty, might be legalistically sound; but at the same time it leaves the impression that the confession would never have been gained without this underhanded method of inducement. Equally difficult to understand is the decision that a confession, induced by the promise of a girl to marry the accused if he confessed to the arson, was voluntary because the promise did not have any reference to the prisoner's escape from the criminal charge but was merely a collateral boon. Furthermore, it was shown that the promise was made by the girl in order to receive $50 offered to her if she could obtain the defendant's confession.\textsuperscript{34}

Voluntary confessions may be obtained against the maker under circumstances when he was not aware of the possible consequences of his statements. In \textit{State v. Chisenhal}\textsuperscript{35} a statement made before a solicitor by a witness, against whom no charge was pending, in reference to an offense committed by another, was received in evidence against the maker when subsequently indicted for the same offense. Testimony given by an accuser in swearing out a warrant for assault and battery was later accepted as evidence against him in a trial for adultery instigated by the person whom he had accused of the assault and battery.\textsuperscript{36}

\textbf{INvoluntary Confessions}

On the other hand there are a number of instances where confessions have been held to be involuntary. In \textit{State v. Davis}\textsuperscript{37} an officer, after arresting the defendant, told him that he had worked up the case and that the defendant might as well tell all about it. Here it was ruled that the statements were calculated to agitate the mind of the defendant, an ignorant man, and that an officer discharged his duty by simply making an arrest, it being no part of his duties to provoke a prisoner into making any statements. A clear illustration of the circumstances which have caused a confession to be involuntary is where armed captors kept the accused in the woods twelve miles from town and subjected him to persistent questioning instead of taking him to jail.\textsuperscript{38}

Although mere handcuffing or tying has not been a fact rendering a confession involuntary, where the bound defendant is lashed until he confesses;\textsuperscript{39} or where one defendant who is bound, sees another lashed, and he confesses to forestall equal treatment;\textsuperscript{40} the confessions have been held involuntary.

The simple fact that crowds surrounded the accused has not justified

\textsuperscript{34} State v. Hardee, 83 N. C. 619 (1880).
\textsuperscript{35} 106 N. C. 676, 11 S. E. 518 (1890).
\textsuperscript{36} State v. Simpson, 133 N. C. 676, 45 S. E. 567 (1903).
\textsuperscript{37} 125 N. C. 612, 34 S. E. 198 (1899).
\textsuperscript{38} State v. Dildy, 72 N. C. 325 (1875).
\textsuperscript{39} State v. Fisher, 51 N. C. 478 (1859).
\textsuperscript{40} State v. Lawson, 61 N. C. 47 (1866).
the holding of a confession to be involuntary; but the addition of the facts, that one defendant saw another struck and threatened; and he was told to confess or be hanged, did justify holding a confession involuntary. The same result was reached where the crowds uttered threats of violence which the defendant heard; and where crowds surged around an unprotected defendant and told him that if he would get out of the state, they would not mob him.

Exhortatory statements that have produced involuntary confession are clearly illustrated in State v. Whitfield. Where a colored man was confronted by his white boss and several other white men, the boss saying "... I believe you are guilty; if you are, you had better say so; ... if you are not, you had better say that. ..." The threats here were also accompanied by menacing gestures. Other examples are where the accused was promised that he would "get off lighter" if he confessed, and where the defendant's statements were made under the influence of liquor after he had been falsely told that others had confessed.

An extraordinary situation is to be found in State v. Brittain. A husband forced his wife to confess to incest with her father on the threat of leaving her. This is perhaps one of the most unusual cases of fear causing an involuntary confession, and it is somewhat contra to the views of State v. Harrison and State v. Hardee—that the influence exerted must bear some relation to the criminal charge.

A confession can be affected by acts as well as words. When five men accosted the defendant and urged her to tell the truth about what she had done with her child, her act of leading them to the river was held to be an involuntary confession.

There are conflicting decisions on whether a denial may be introduced in evidence. In State v. McDowell the defendant, while lying in bed, was confronted by four armed officers who accused him of murder, which accusation the defendant denied. The defendant objected to this statement being introduced in the trial court, and on appeal it was held that this was not a confession at all; and that, although the statement might have been induced by fear, it was admissible in evidence. But where the defendant was forced to listen to the reading of the affidavits of other defendants which incriminated him, and he remained

41 State v. George, 50 N. C. 233 (1858).
43 State v. Parish, 78 N. C. 492 (1878).
44 70 N. C. 356, 357 (1874).
45 State v. Drake, 113 N. C. 624, 18 S. E. 166 (1893).
47 117 N. C. 783, 23 S. E. 433 (1895).
48 115 N. C. 706, 20 S. E. 175 (1894).
49 83 N. C. 619 (1880).
50 State v. Crowson, 98 N. C. 595, 4 S. E. 143 (1887).
51 129 N. C. 523, 39 S. E. 840 (1901).
silent, the court refused to allow the introduction of his silence during the reading as evidence on the basis that if this silence could be construed as a confession it was involuntarily made.\(^5^2\)

In the light of the discussion of the cases involving voluntary and involuntary confessions it is difficult to understand the views of the dissent in the principal case. The majority decision was founded on the testimony of both the state's and the defense's witnesses that a lighter penalty would be exacted in North Carolina; that one of the cross-examiners made his statements as part of a "scheme"; and that youthful defendants would not know enough about criminal procedure to ask the type of questions he asked unless he had been influenced by previous statements of the examiners. The dissent apparently based its opinion on the conflicting testimony of some of the state's witnesses in regard to some of the statements that were credited to them and thought that there was sufficient evidence to support the trial judge's opinion that the confession was voluntary.

**Second Confessions**

Another phase of this problem is second confessions. Subsequent confessions involving the same crime are presumed to flow from the same inducement that caused the first involuntary confession. Unless there has been a sufficient showing of facts to rebut the inference that the second confession was dominated by the same influence, the second confession will fail equally with the first.\(^5^3\) The question of when sufficient evidence has been introduced to rebut that presumption has produced interesting situations. An outstanding example of the refutation of the previously dominating influence is found in *State v. Fisher.*\(^5^4\) The first confession was gained by the cruel beating of the defendant while he was chained; but the second confession, given while the defendant was in jail, was made in order to extenuate the defendant's offense in the estimation of his friend. Equally strong is the case where the first confession was obtained through fear of a Georgia lynching gang, and the second confession was made in North Carolina to a fortune teller and a fellow prisoner several days later.\(^5^5\) *State v. Moore*\(^5^6\) presents a decision that apparently was not justified by the facts. Here the first confession was prompted by the sheriff's promise to "let the defendant off lighter." Subsequently the defendant told a psychiatrist the same story without any inducement on the part of the doctor; but the defendant, according to testimony, labored under the idea that the sheriff had sent the psychiatrist and that he must tell coinciding stories in order

\(^5^3\) State v. Fox, 197 N. C. 478, 149 S. E. 735 (1929).
\(^5^4\) 51 N. C. 478 (1859).
\(^5^6\) 210 N. C. 686, 188 S. E. 421 (1936).
to gain the sheriff’s aid. Yet this second confession was held to be voluntary. A confusing situation is revealed in *State v. Grier*.

In the trial court the first confession was discarded because the statements had been made by the defendant while in jail before officers, none of whom had cautioned him as required by statute. The second confession, made to the same officers was accepted by the trial court; and the defendant appealed, contending that the second confession was induced by the same influence as the first. The Supreme Court upheld the trial court’s decision in regard to the second confession; while at the same time it trounced the decision by pointing out that the first confession was equally sufficient, since the only basis on which it had been ruled out was the lack of the statutory caution which is required before magistrates and not officers. Another unusual fact situation is found in *State v. Gregory* where the defendant was induced by an examining magistrate to confess on promise of a pardon. The magistrate then approached the defendant and told him that he had acted improperly and that the confession was illegal; furthermore, he warned the defendant that any subsequent statement would be used against him, after which the defendant confessed to another witness. This second confession was held voluntary. In *State v. Godwin* the trial court ruled out the first confession as involuntary, but accepted a second confession. The defendant appealed contending that the confession which had been admitted was the first one that he had made and not the second, and that both were involuntary; but the Supreme Court ruled that the finding of the trial court if supported by evidence was conclusive.

Similarly, there are cases where the second confession has been rejected as being dominated by the same influence as the first. Where the defendant has been promised a lighter sentence, and where he was promised no prosecution at all if he would tell the truth, the second confessions were rejected equally with the first when there had been no evidence that the inducements had been withdrawn. It is to be noted that in the latter of these examples the second confession was made before a person other than the one to whom the first had been made; yet in absence of evidence showing that the prior inducement no longer existed, the court held that the second confession was inadmissible. A strong example of the second confession being dominated by the prior influence is shown in the case where a colored man was pursued by several officers who shot at him a number of times while attempting arrest.

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57 203 N. C. 586, 166 S. E. 595 (1932).
58 See note 9 supra.
60 216 N. C. 49, 3 S. E. (2d) 347 (1939).
61 *State v. Gibson*, 216 N. C. 535, 5 S. E. (2d) 717 (1939); *State v. Drake*, 113 N. C. 625, 18 S. E. 166 (1893); *State v. Roberts*, 12 N. C. 259 (1827).
When he was caught, he confessed. The second confession was made before the same officers on the next day while the accused was handcuffed and in jail. This second confession was also held involuntary. In State v. Stevenson the first confession was made to an officer who had told the accused that: “... there is no use you beginning to lie to me this morning. I have already too much evidence to convict you. We are going to take you down there.” After the confession, the accused was taken to a doctor to have his arm wound treated, whereupon he confessed again. The defendant testified that he had been afraid of lynching, and the court held that the fear instigated by the officer’s remarks influenced the second as well as the first confession. This same result was reached in the case where a woman had been forced into confessing to incest by the threat of her husband to leave her where the second confession was made to her family in the presence of her husband who had not withdrawn his threat.

**Third Party Confessions**

A perplexing problem is presented by the introduction of the confessions of third parties to vindicate the defendant. The original case in that line is State v. May. The defendant offered evidence of the confession of a third party that he alone was guilty of the crime of which the defendant was accused, but this evidence was rejected as hearsay. This harsh rule has been consistently followed, and the court in State v. English adequately expressed the criticism of this line of authority by saying: “Almost every judge who has had to lay down the law in cases like this does not like it. It may seem absurd to one not accustomed to compare proofs, and estimate the weight of testimony according to the test of veracity that an unbiased confession of one man that he is guilty of an offense with which another is charged, should not establish the guilt of him who confesses it, and by consequence, the innocence of the other, but the law must proceed on general principles.”

**Evidence Uncovered by Involuntary Confessions**

This discussion is not complete without mention of evidence gained through involuntary confessions. Although the confession itself is involuntary, evidence revealed by such confession has always been admissible. Examples of this are where an accused murderer revealed the

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63 State v. Drake, 82 N. C. 592 (1880).
64 12 N. C. 648, 649, 194 S. E. 81 (1937).
66 15 N. C. 328 (1833).
67 State v. Church, 192 N. C. 658, 135 S. E. 769 (1926).
68 201 N. C. 295, 299, 159 S. E. 318, 319 (1931); Note (1931) 10 N. C. L. Rev. 84.
69 State v. Thompson, 161 N. C. 242, 76 S. E. 243 (1912); State v. Mallet, 125 N. C. 718, 34 S. E. 651 (1899); State v. Winston, 116 N. C. 992, 21 S. E. 106 (1895).
hiding place of the bloody murder club to officers;\textsuperscript{70} where accused thieves revealed the hiding places of stolen property in a garden\textsuperscript{71} and in the woods;\textsuperscript{72} and where a person suspected of larcency, revealed where the stolen money, saddle bags and clothing were concealed.\textsuperscript{73}

**PROCEDURAL PROBLEMS**

When a confession is accepted in evidence, the entire confession must be brought in.\textsuperscript{74} The part favorable to the defendant as well as the part unfavorable must be admitted. In *State v. Worthington*\textsuperscript{75} evidence was offered of part of a conversation between the alleged thief and the owner of the stolen goods, and the defendant objected to the omission of the rest of the conversation. His appeal was successful, and the court stated that this admission of the confession in its totality was not the situation where the defendant might be held to be manufacturing evidence for himself. Likewise, where a confession revealed that the defendant was drunk at the time he committed the crime, and the trial judge charged the jury that the evidence offered by the defendant in his own behalf must be taken "with a grain of salt," the court on appeal ruled that the charge was error. Since the defendant was entitled to have the whole confession offered, the evidence of drunkenness was for the jury to consider on the question of the deliberation and premeditation in the murder indictment.\textsuperscript{70}

All confessions are presumed to be voluntary until or unless they are controverted by the defendant,\textsuperscript{77} and the voluntariness is for the trial court to determine at the *voir dire*.\textsuperscript{79} Confessions may be either express or implied. An express confession is where the defendant pleads guilty and thus in the face of the court admits the truth of the accusation. This plea of guilty equals a conviction, and the court then has nothing to do but decree judgment in this formal confession. But a full and voluntary confession made before a magistrate or any other person is merely evidence of guilt.\textsuperscript{76} In the preliminary hearing before the trial court, the *voir dire*, the defendant has the right to ask that the jury be withdrawn, to cross-examine the state's witnesses, and to present his own evidence as to the incompetency of the confession.\textsuperscript{80} In the presentation of the defendant's evidence it has been held error for the trial judge to refuse to allow the defendant to testify as to his ver-

\textsuperscript{70} State v. Lowry, 170 N. C. 730, 87 S. E. 62 (1915).
\textsuperscript{71} State v. Winston, 116 N. C. 992, 21 S. E. 106 (1895).
\textsuperscript{72} State v. Lindsey, 78 N. C. 499 (1878).
\textsuperscript{73} State v. Moore, 2 N. C. 482 (1797).
\textsuperscript{74} State v. Kelly, 216 N. C. 627, 6 S. E. (2d) 533 (1939).
\textsuperscript{75} 64 N. C. 594 (1870).
\textsuperscript{76} State v. Edwards, 211 N. C. 555, 191 S. E. 1 (1937).
\textsuperscript{77} State v. Winston, 116 N. C. 992, 21 S. E. 106 (1895).
\textsuperscript{78} State v. Richardson, 216 N. C. 304, 4 S. E. (2d) 852 (1939).
\textsuperscript{79} State v. Rodgers, 216 N. C. 731, 6 S. E. (2d) 499 (1939).
\textsuperscript{80} State v. Branner, 149 N. C. 559, 63 S. E. 169 (1908).
\textsuperscript{81} State v. Smith, 213 N. C. 299, 195 S. E. 819 (1938).
sion of the confession. Since the defendant has a right to offer evidence that the confession was not voluntary, and since by statute a defendant has the right to testify in his own behalf at his request, he is competent to testify in regard to the voluntariness of his own confession; and the judge should then pass on the credibility of his testimony. If the defendant fails to offer any evidence at the voir dire to show that the confession is involuntary, he waives this right; and his testimony given at trial tending to show that the confession is involuntary comes too late to be considered. However, if the defendant waives his right to controvert the voluntariness of the confession and on trial it is subsequently revealed from the evidence of the state's witnesses that the confession is not voluntary, it is admissible at that point.

What facts amount to such threats or promises as to exclude confessions as not voluntary are questions of law. Whether there is any evidence tending to show that the confession is not voluntary is a question of law which is reviewable. But whether the evidence, if true, proves the facts, or whether the witnesses giving testimony in regard to facts are credible or not, or in the case of conflict of testimony, which witness should be believed, are questions of fact which cannot be reviewed unless there is not sufficient evidence to support the jury's finding.

Instructions can be given to the jury by the judge that even voluntary confessions are to be received with caution, but this is not required. It is not error to refuse to charge that confessions are to be received with caution, and still less so, when the court is not asked to give the instructions. The jury alone has the right to judge the sufficiency of the confession as proving the fact confessed, and they may believe the confession in part, in toto, or not at all. In State v. Hardison, a charge that it was for the jury, having regard to all the evidence, to say what portions of the defendant's statements they would receive and what they would reject in their sound discretion, was upheld.

IDRIENNE E. LEVY.*

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* LL.B., University of North Carolina, February, 1945.

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81 State v. Whitmer, 191 N. C. 659, 132 S. E. 603 (1926).
85 State v Andrews, 61 N. C. 205 (1867).
87 State v. Manning, 221 N. C. 70, 18 S. E. (2d) 821 (1942); State v Fain, 216 N. C. 157, 4 S. E. (2d) 319 (1939); State v Burgwyn, 87 N. C. 572 (1882).
88 State v. Hairston, 222 N. C. 455, 22 S. E. (2d) 885 (1942); State v. Harris, 222 N. C. 157, 22 S. E. (2d) 229 (1942); State v. Perry, 212 N. C. 533, 193 S. E. 727 (1937); State v. Gosnell, 208 N. C. 401, 181 S. E. 323 (1935).
90 State v. Patrick, 48 N. C. 443 (1856).
91 State v. Graham, 68 N. C. 247 (1873).
92 State v. Davis, 63 N. C. 578 (1869).
93 75 N. C. 200 (1876).