242 Wis. 416
Supreme Court of Wisconsin.

LE FEVRE
v.
STATE.

March 9, 1943. | Rehearing Denied May 18, 1943.

Error to review a judgment of the Circuit Court for Fond du Lac County; August C. Hoppmann, Circuit Judge presiding.

Reversed.

FOWLER, FRITZ, and BARLOW, JJ., dissenting.

****289** ***416** The plaintiff in error, Frank B. Le Fevre, hereinafter referred to as the "defendant," was charged in the information with having:

"On the 31st day of January, 1941, at the town of Byron in said county (Fond du Lac), Frank B. Le Fevre did willfully, feloniously and of his malice aforethought, kill and murder one Joe Rookes, also known as Zios Rookes, contrary to the statutes in such case made and provided and against the peace and dignity of the state of Wisconsin."

Upon the trial the jury found defendant guilty as charged. Defendant's several motions after verdict were denied, whereupon ***417** he was sentenced to imprisonment in the state prison at Waupun, Wisconsin, at hard labor for the remainder of his natural life. Defendant brings this writ to review the judgment of conviction and sentence. The material facts will be stated in the opinion.

West Headnotes (4)

[1] Criminal Law
Lie Detector or Polygraph Tests and Procedures
Criminal Law
Credibility, Veracity, or Competency

In murder prosecution, those parts of reports of lie detector tests made by experts containing the findings were properly excluded.

29 Cases that cite this headnote

[2] Homicide
Burden of Proof

The burden of proof was upon the state in murder prosecution.

[3] Criminal Law
Degree of Proof
Criminal Law
Degree of Proof

Circumstantial evidence will sustain a conviction only where all incidents are satisfactorily established and are consistent with the happening of some particular event, and inconsistent with any other reasonable theory than that they tell the correct story of how such event happened to take place.

3 Cases that cite this headnote

[4] Homicide
Miscellaneous Particular Circumstances

Circumstantial evidence did not sustain conviction of murder, notwithstanding showing that accused, on day when deceased disappeared, cashed checks which deceased had had in his possession, as to which checks an expert examiner of questioned documents testified that checks were made by same person and with same ink, and that endorsements were made with different pens.

1 Cases that cite this headnote

Attorneys and Law Firms

J. E. O'Brien, of Fond du Lac, for plaintiff in error.

John E. Martin, Atty. Gen., William A. Platz, Asst. Atty. Gen., and S. Richard Heath, Dist. Atty., and L. J. Fellenz, Sr., Sp. Asst. Dist. Atty., both of Fond du Lac, for defendant in error.

Opinion

MARTIN, Justice.

For a period of about five years continuously prior to January 31, 1941, Joe Rookes was the proprietor of a small restaurant located on the east side of south Main street in the city of Fond du Lac. He had several employees who worked in the restaurant. At 7:50 o'clock on the night of January 31, 1941, Rookes left his place of business and did not thereafter return. His body was found in Lake Winnebago near Black Wolf Point on November 1, 1941. On February 1, 1941, Anton Raasch went to what is known as "Hobbs Woods" to get wood. There he noticed in the snow a set of tire tracks which led from the traveled portion of the road toward a fence which enclosed the woods. About two feet north of the north tire track he found a large pool of blood and in this blood a bow, lens, and part of the nosebridge of a pair of eyeglasses. These were identified as having been made for Joe Rookes. Raasch found no footprints or other marks of any kind in the snow except the tire tracks.

On February 2, 1941, Bernard Barr found at the place where Raasch had shoveled the bloodstained snow additional parts of eyeglasses which were also identified as belonging to Rookes. On February 2 a group of boys, who had learned of Rookes' disappearance on the night of January 31 and of the finding of parts of his eyeglasses on February 1, went ***418** to Hobbs Woods to search for Rookes' body. In their search they found under a bridge in the vicinity of Hobbs Woods several spots of blood. Peter Frank, one of the boys, gathered up some of the bloodstained snow which was then frozen. He also took some of the bloodstained snow from the spot of the pool of blood found by Raasch. Both samples were later turned over to the police who sent them to the F. B. I. at Washington, D. C., for analysis. The F. B. I. bureau reported that the samples contained human blood. There were footprints in the snow leading down to where the blood spots were found under the bridge.

Dr. E. L. Tharinger, a pathological specialist, who made a complete postmortem, testified that death was caused by fracture of the skull, caused by a severe local, external violence to that particular portion of the skull; that the area fractured was from the ear almost to the middle line of the back of the skull; also, a skull fracture on the left side; that the bones of the forearms and hands were absent; that the right foot, including the ****290** bones of the ankle, and bones of the right leg were absent; that both bones of the left leg were fractured above the ankle; that nine or ten ribs on each side were fractured. Dr. Tharinger said he did not think that the fractures of the leg bones were caused by pounding on the rocks of the shore of Lake Winnebago, but that the ribs might have been fractured in that manner. He was not asked by either state or defense counsel whether the fractures of the skull could have been caused in that manner.

Dr. Florin testified that a blow of sufficient force to cause a fracture of the skull would cause both internal and external bleeding. There is no evidence of any bloodstains having been found on any part of the defendant's car, although the police officers, sometime between March 6 and March 20, 1941, had the car in their possession a couple of days, for the purpose of examining it to ascertain if there were any blood spots or stains on the car.

***419** Mrs. Hazel Burke, an employee in Rookes' restaurant, testified that in the late afternoon of January 31 she asked Rookes whether he was going to listen to the Joe Louis-Red Burma fight that evening. She said Rookes replied that he didn't know if the fellow had a radio in his car; that she asked him who he meant and Rookes replied, "Frank who used to work for Candlish" (Defendant had worked for Candlish sometime prior to 1933); that Rookes said Frank had told him he had two sons old enough to join the army and he wanted them to go into the restaurant business at Beaver Dam so they would not enlist in the army (Defendant had three sons who, at the time of the trial in May, 1942, were sixteen, eighteen, and twenty years of age, respectively; not subject to draft at the time in question), that Frank was going to look at some used restaurant equipment that evening and that he was going along because he knew the value of such equipment and would see that Frank did not get gypped.

Mrs. Anna Mae Chase, an employee in the restaurant, testified that just before Rookes left the restaurant at about 10 minutes to 8 she heard him say, "There comes Frank now"; that he took his coat and hat and went out; that she watched Rookes go past the restaurant, saw him stop in the alleyway between the restaurant and the Legion Tavern next door; that Rookes then continued walking in a northerly direction on Main street; that she did not see him meet or talk to anyone after he left the restaurant. She further testified that at about 7:30 p. m. Rookes checked the cash in the register; that he left about $10 in the register to make change; that he then went into the back room where the safe was located; that she did not know whether he put any money in the safe or not; that when Rookes left the restaurant evenings he would usually return at about 9 or 9:30 o'clock; that on the night of January 31 he did not return; that she remained in the restaurant until about

3 o'clock the following morning, at which time her husband called for her; that she then called Harry Burke, ***420** who was also an employee in the restaurant, and told him that Rookes had not returned. Burke came to the restaurant to lock up. He found the safe open. He locked the safe, closed the restaurant, and returned home. Burke opened the restaurant at about 6 a. m. on February 1. He then unlocked the safe, found $69 in onedollar bills. About a week later the private box in the safe was opened and it contained $500 in currency, also Rookes' bank book.

Mr. Burke testified that on the evening of January 31, between 5 and 5:30, Rookes cashed two checks for Alvin Danner, a section foreman on the Soo line; that they were both Soo Railway Company checks, payable to the order of Mr. Danner, one for the sum of $49.16, and the other for $5.76; that when Rookes cashed the checks he put them with a roll of money in his pocket; that he had a large roll of money on his person; that Rookes, during the afternoon, had cashed two other checks, one for Earl McCumber, the other for a man named Sharples. The two checks which Rookes cashed for Danner were both dated December 31, 1940. They were both endorsed, “Alvin Danner” and “F. B. Le Fevre.” “F. B.” are defendant's initials. The checks were not endorsed by Joe Rookes. They were both cashed by Le Fevre on February 1 at the First Fond du Lac National Bank.

In explanation of his possession of and cashing said checks, defendant testified that in the forenoon of February 1 as he was walking towards the Ahern Clothing Store to buy a pair of work gloves, which store is right next to the First Fond du Lac National Bank, a party known to ****291** him by the name of “Al,” who was in an automobile and appeared to be crippled, called to defendant and asked him if he would take the checks into the bank and bring him the cash; that he took the checks, went into the bank, endorsed them, returned to the automobile, and gave “Al” the proceeds of the two checks; that the bank clerk who waited on him had known him for a number of years.

***421** Alvin Danner, to whom the checks were made payable, testified that he cashed them at Rookes' restaurant at about 5:30 the evening of January 31; that Rookes took a large roll of money out of his pocket, gave him the cash, then wrapped the checks around the roll of money, put a rubber band around it, and put it back in his pocket.

John F. Tyrrell, expert examiner of questioned documents, testified that the two checks (exhibits 12 and 13) were made by the same person and with the same ink; that he believed that the endorsements were made with different pens. He said that the endorsement on exhibit 12 was better formed than the endorsement on exhibit 13; that the endorsement on exhibit 13 was a coarser line than on exhibit 12. Mr. Tyrrell's analysis was based on pens sent to him on or about November 17, 1941. These pens were taken from the counter at the bank after several days use. One was slightly more used than the other. They were both Estabrook pens but of different numbers. The two pens offered and received in evidence on the trial as exhibits 30 and 31 were samples of the two kinds of Estabrook pens. They were not, however, the same pens that Tyrrell was given to analyze in November. Asked whether there was an appreciable difference in the writing quality of the same numbered pens made by the same manufacturer, he said that originally there would not be much difference because the pen manufacturer puts out pen points that are as nearly identical as possible, but “after this article or pen has been in use for some time it undergoes some changes. Sometimes it becomes more flexible, especially where there are finer and thinner materials. So that after a pen has been in the same use there has been some change.” He also said that there might be an inference that the first pen used did not write well and a different pen was used in making the second endorsement. From the evidence it appears that with ordinary use these pens were changed about every ten days. If the life of ***422** the pen depends upon its use, it is not improbable that after a few days use two pens of the same make and number will show different lines in the writing quality. One may show a coarser line than the other.

As to the ink used in the endorsement of the checks, exhibits 12 and 13, Mr. Tyrrell testified that he did not think that the ink was the same as that used in the bank. It appears that in the bank Sanford's Royal Blue ink was used. However, in this connection, it appears that the sample of ink sent to Mr. Tyrrell at the same time the pens referred to were sent him was taken from a bottle of fresh ink. He was not furnished, nor did he analyze, any ink that had been standing in the ink wells of the bank. It further appears that the ink used in the ink wells on the bank counters had to be changed every week or ten days. Mr. Tyrrell's testimony relates to the same brand of ink, but the sample which he analyzed, and on which he based his belief, came from a fresh bottle. His analysis and testimony relate entirely to fresh ink. What his analysis might have shown had the ink been taken from ink wells on the bank counters, which had been used and exposed for several days, we do not know.

The state, in its brief, claims that the “Al” referred to in defendant's testimony is a straw man, a mythical “Al.”

However, the state, in rebuttal, did not regard this man "Al" either as a straw man or a myth. The state offered evidence that "Al" was not in a crippled condition on January 31; that he fractured a leg on February 10. It is quite clear that the state offered this testimony to disprove defendant's testimony to the effect that "Al" appeared to be in a crippled condition on February 1, when he asked defendant to take the two checks into the bank and get them cashed. In rebuttal the state also offered evidence to show that this "Al" was involved in an automobile accident on January 1, 1941; that his car was smashed up and that he did not have it repaired until after his recovery. We think it rather strange that neither ***423** the state nor defense produced this man "Al" as a witness at the trial. We can appreciate why he might not want to involve himself with the possession of the checks. On the other hand, if he did not have the checks and did not give them to defendant ****292** to be cashed there would be no incriminating circumstances as far as he was concerned.

Early on the morning of February 1 a member of the police department called defendant at his residence to inquire if he had been out with Rookes the night before. Defendant replied that he had not. Shortly thereafter defendant, on his way downtown, stopped at the police station and was there told by one of the officers that Rookes had left his restaurant at about 10 minutes to 8 the evening before and had not returned. While at the police station defendant's car was parked in the immediate vicinity. This was before defendant cashed the two checks at the bank. On February 4 defendant was called to the police station and questioned at length as to his whereabouts the evening of January 31, and concerning any contact or conversation he had with Rookes on the afternoon of January 31. It appears that before the police officers questioned defendant they had been told by Mrs. Burke of the conversation she had with Rookes about going out with "Frank who used to work for Candlish," who wanted to buy some secondhand restaurant equipment.

Defendant said that at about 4 o'clock on the afternoon of January 31, while passing Rookes' restaurant, Rookes stood in the doorway with a clock under his arm and asked defendant to step into the restaurant and see his new clock, which defendant did; that he made some remark about the clock not hanging straight; that he was not in the restaurant more than a couple of minutes, and as he left Rookes also left, stating that he was taking the old clock across the street to a grocer. Defendant accounted for his whereabouts during the entire evening of January 31 from approximately 5 o'clock until he retired for the night.

***424** On March 6 police officers called for defendant at his home and took him to the police station. They showed defendant the two checks which they had received from the Soo Railroad Company (state exhibits 12 and 13), which bore defendant's endorsement, which he had cashed at the bank on February 1. Defendant said that he had endorsed and cashed the two checks, but stated that he knew nothing about the checks having any connection with Rookes; that Rookes' name was not on the checks; that he had received them from a man known to him only as "Al;" and related the same facts to which reference has hereinbefore been made. Defendant was kept in the police station and in jail all night on March 6. The morning of March 7 defendant was asked by one of the police officers if he would go to Madison and take the lie detector test. He immediately consented and was then taken to the office of the district attorney, where he signed an agreement to submit to a lie detector examination to be conducted by Professor Mathews of the chemistry department of the University of Wisconsin. This agreement in part provided:

"It is further **stipulated** and agreed by and between the said Frank Le Fevre and S. Richard Heath that any fact, matter or thing disclosed by said **lie detector** examination of said Frank Le Fevre and the findings of Professor Mathews thereon, may be admitted in any trial or preliminary examination before any of the courts of the county of Fond du Lac or state of Wisconsin."

The examination was conducted by Professor Mathews on March 7. Mathews reported his findings to the district attorney and for some reason, not explained by the district attorney or any of the officers, they were not satisfied with the report and findings made by Mathews. On March 18 defendant was asked if he would submit to another lie detector test to be conducted by Professor Leonarde Keeler of Chicago. Defendant consented and the district attorney prepared a stipulation ***425** identical in terms to the stipulation for the examination by Mathews. On March 20 defendant was taken to Chicago where he submitted to three lengthy polygraph tests. The examinations at Chicago were conducted by George W. Haney, an associate of Professor Keeler. The report of the examinations and all the records in connection with the tests were reviewed by Professor Keeler. The district attorney was not satisfied with the report and findings made by Haney and Keeler.

[1] On the trial defendant offered the report and findings of Professor Mathews; also, the report and findings of Haney and Keeler. On objection by the state, those parts of the

reports containing the findings were excluded and did not get before the jury. They were properly excluded. State v. Bohner, 210 Wis. 651, 246 N.W. 314, 86 A.L.R. 611. The district attorney, in rebuttal, testified as follows as to his conversations with the defendant relative ****293** to the lie detector tests. His testimony came in without objection. He said:

"I drew up a written **stipulation** before he went to Madison to the effect that either the state or the defendant could use the finding of the **lie detector** test at the trial, if there was one. Before he went to Chicago on March 20th to take another **lie detector** test, I drew up a like **stipulation**. I told him in my office about going to Chicago, that it was important to him as well as to the state that 'if we were satisfied with that test, it might be we would have to look elsewhere.' I said it might clear the thing up. Reports from Madison favorable to the defendant were not satisfactory to me. Before going to Chicago he was brought to my office by the officers. He said to me it was rather sudden, and he thought he was all through after he passed at Madison. I said it wasn't entirely satisfactory to me.

"Q. Didn't you say to him: 'Frank, if you go down to Chicago and you pass that test again, why we will give you up; we will give up your angle and go after somebody else.'

"A. Well, I can't say I said those exact words. I told him it might result in our having to look elsewhere.

***426** "I conveyed the thought to him if he passed the test in Chicago, we would go at it at some other angle; that we would look elsewhere-something to that effect. I meant we would have to look somewhere else for the guilty party if he passed the test in Chicago. The test in Chicago was not satisfactory to us. It was favorable to the defendant. When he came back from Chicago, he went back to his railroad work, and from March 20th until December 12th when he was arrested, he was not further disturbed by myself or the officers."

The state contends that the motive was to murder and rob, and in that connection the state introduced evidence of defendant's financial condition. The state's evidence tends to show that from July 25, 1940, to March 25, 1941, defendant's gross earnings were $1,110.62; that defendant spent, during the same period, $1,256; that during the period defendant borrowed $325 from his father, and $158 from a finance company on December 7, 1940. However, during this period the two older sons had substantial earnings, most of which was contributed to the family use. The earnings of the father and two sons during the period mentioned exceeded the total disbursements by a substantial amount. We see no occasion for further reference to defendant's financial condition; nor do we find in his financial condition any evidence to support the state's theory of a motive for the crime, in so far as trying to connect defendant with the murder.

The defendant is a married man, fifty-two years of age. The family consisted of himself, his wife, and three sons. He graduated from high school and attended Ripon College for three years. He enlisted in the first World War and served twenty-eight months, eighteen of which were with the A. E. F. in France. He has no criminal record aside from the present charge against him. Several witnesses on the trial testified that his reputation as a law-abiding citizen was good. With the exception of the period of his service in the army, he has resided in Fond du Lac county. From the moment he learned that he was under suspicion for the murder of Rookes until ***427** the time of his arrest on December 12, 1941, he rendered to the public officials of Fond du Lac county the fullest cooperation. This is evidenced by the testimony of the district attorney; it is shown by his willingness to submit to the lie detector tests by two of the nationally known experts in that field. We have the word of the district attorney that those tests were favorable to the defendant. While the findings of these experts were properly excluded from the jury, the district attorney's testimony came in without objection and we regard it as very significant.

The circumstance of defendant cashing the two Danner checks on February 1, which were cashed by Rookes for Danner on the afternoon of January 31, is the foundation on which the state's case rests. Even though the jury might disbelieve the defendant's explanation as to how the checks came into his possession, and his cashing same, that circumstance does not establish beyond a reasonable doubt that he murdered Rookes. There is no evidence that Rookes had the checks on his person when he left his place of business at about 10 minutes to 8 the evening of January 31. There is no evidence that the defendant and Rookes were seen together at any time or place after he left his place of business.

****294** On the proof as to venue, the trial court held that Rookes was murdered at Hobbs Woods, where the pool of blood and the parts of his eyeglasses were found. The witness Raasch, who on the morning of February 1 found this pool of blood and parts of the eyeglasses, said that the only tracks in the snow where the blood was found were two tire tracks; that the pool of blood was at a point about two feet north of the north tire track. The state's theory as stated by the district

attorney is that Rookes was killed by a blow on the head administered at Hobbs Woods where the pool of blood was found in the snow. The state's evidence shows that there were no marks in the snow, other than the tire tracks and the pool of blood, which is described as being six or seven inches in diameter and ***428** soaked solid down into the ground. There was not a single footprint in the snow or evidence of any struggle having taken place there. The state contends that on the fatal night defendant took Rookes into his car, drove him south of Fond du Lac about twelve miles to Hobbs Woods, there killed him, then took the body to a point north of the city, weighted it down, and placed it in Lake Winnebago. The state's theory and evidence would impel the conclusion that the murder was committed in the car. The medical testimony is to the effect that a blow of sufficient force to cause a fracture of the skull would cause internal and external bleeding. No stain of blood was found on any part of the defendant's car, and it was examined for that purpose. There is no evidence of any blood stains on defendant's clothes.

[2] We must, and do, assume that the jury disbelieved the defendant's testimony as to the manner in which he obtained possession of the two Danner checks on February 1. To sustain the conviction the proof must be such as to warrant the jury's finding beyond a reasonable doubt that defendant murdered Rookes and took the two checks from his person. As stated above, there is no evidence that Rookes had these checks on his person when he left his place of business at about 8 o'clock the evening of January 31. There is no proof of defendant being with Rookes at any time after he left the restaurant. The cashing of the checks, in and of itself, does not prove that defendant was present when the murder was committed. The defendant's statement that the checks were handed to him by a man known to him only as "Al" leaves the impression that more might have been presented to the court in corroboration or in refutation. This man "Al" was not called as a witness. The burden of proof was upon the state.

[3] Circumstantial evidence will sustain a conviction only where all the incidents are satisfactorily established and are consistent with the happening of some particular event, and inconsistent with any other reasonable theory than that they tell the correct story of how such event happened to take place. ***429** Loguidice v. State, 160 Wis. 17, 20, 150 N.W. 980; Wittig v. State, 235 Wis. 274, 281, 292 N.W. 879.

[4] At the conclusion of the state's case, and again when all the evidence was in, defendant's counsel moved that defendant be discharged on the ground that the evidence failed to establish his guilt beyond a reasonable doubt. Both motions were denied. Upon the whole record we cannot say that the proof is sufficient to enable the jury to find that defendant was guilty beyond a reasonable doubt.

Judgment reversed. The warden of the state prison at Waupun, Wisconsin, is directed to forthwith discharge the defendant, Frank B. Le Fevre, from custody.

FOWLER, FRITZ, and BARLOW, JJ., dissenting.

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Police Science Legal Abstracts and Notes

John E. Reid

POLICE SCIENCE LEGAL ABSTRACTS AND NOTES

John E. Reid

Recent Decisions Concerning "Lie Detector" Examinations

Two murder cases involving the use of "Lie Detector" tests were decided recently by the Wisconsin Supreme Court. The first: State of Wisconsin v. Herman DeHart (8 N. W. (2) 360, 1943). The defendant voluntarily submitted to a "Lie Detector" examination in Chicago and after the tests, upon further interrogation, admitted to the examiner that he did participate in the murder of an "old shacker" in Oneida County, Wisconsin in 1935. He made and signed a confession incorporating the details as to his part in the robbery-murder of the "old recluse." After receiving a share in the proceeds of the robbery, the defendant travelled throughout several southern states for six years before he returned to Oneida County.

Soon after the murder, investigators learned that the shack was burned to the ground and only the charred remains of the victim were discovered. At the trial the defendant pleaded an alibi stating he was out of the state at the time the murder was committed and retracted his confession alleging it was not voluntarily made. The Supreme Court ruled the confession to be voluntarily given but conceded "there was some evidence that Mr. Reid, who gave the 'lie detector' test, used profane language in urging the defendant to tell the truth . . . but there is nothing to show that his conversation was coercive in manner or content." The defendant further alleged that he was strapped down during the tests, but the court found no evidence that such was the case and that only the ordinary appliances of the "lie detector" were attached.

[Editor's note: This case is unique because the "lie detector" so clearly indicated guilt even though the test was not made until six years after the crime. Another interesting point not alluded to by the court was the defendant's freehand drawing in the confession as to the position of the victim's body after the shooting. Since the shack was destroyed by fire the freehand drawing in the confession was corroborated by the coroner's report of six years before.]

The second case, Frank B. LeFevre v. State of Wisconsin (8 N. W. (2) 288, 1943), took a decidedly different turn. The defendant appealed his conviction for murder and states that on two separate occasions he voluntarily submitted to "lie detector" tests and that prior to each of these tests he signed a stipulation drawn by the District Attorney. These identical agreements in part provided: "It is further stipulated and agreed by and between the said Frank LeFevre and S. Richard Heath (District Attorney) that any fact, matter or thing disclosed by said lie detector examination of said Frank LeFevre and the findings thereon, may be admitted in any trial or preliminary examination before any of the courts of the County of Fond du Lac or State of Wisconsin."

The District Attorney was not satisfied with the results of the first test and two weeks later asked the defendant to submit to another "lie detector" test. The District Attorney was still not satisfied after the second test and the case was tried. The defendant asked that the reports and findings of Professor Mathews and Professor Keeler be admitted as evidence, but the state objected to those parts of the reports containing the findings.

The Supreme Court ruled that the testimony of the "lie detector" experts was properly excluded, but the District Attorney's testimony that the tests were favorable to the defendant came in without objection and therefore was significant. The court reviewed the whole record and decided there was not sufficient evidence to find the defendant guilty beyond a reasonable doubt and directed the accused to be released.

Procedure regarding Admissibility of Admission in the Federal Courts

In the recent case, McNabb v. U. S. (63 Sup. Ct. Rep. 608 (Tenn., 1943) the petitioners appealed from a conviction of second degree murder. It appears the petitioners were engaged in the sale of untaxed whiskey when they were surprised by Federal officers. During the melée that followed, one of the Federal agents was shot but no one could identify the assailant. The petitioners were arrested, brought to Chattanooga and kept in a Federal Building detention room for fourteen hours. The Federal agent in charge of questioning testified that he warned them of their constitutional rights and that in the presence of about six officers, after a twenty-one hour interrogation, preceded by four hours the night before, each of the petitioners made some admissions. These admissions were the crux of the Government case against the petitioners.

Counsel for the defense challenged and appealed the admissibility of the admissions on the ground that the constitution forbade their use by the guarantee of the Fifth Amendment that no person "shall be compelled in any criminal case to be a witness against himself . . . without due process of law."

The United States Supreme Court in an opinion written by Mr. Justice Frankfurter held the admissions were not admissible. The court did not base its conclusion however upon the guarantees of the Fifth Amendment, nor did it find that the admissions were made involuntarily. In substance, the opinion states that a conviction resting solely on admissions secured "prior to the suspects being taken before a committing magistrate" was such a flagrant disregard for proper criminal procedure, that it cannot be made the basis of conviction in the Federal Courts. Mr. Justice Reed dissented on the ground that the established test of only admitting voluntary confessions is adequate and the addition of the requirement of promptly bringing the prisoner before the committing magistrate offers a less clear rule which will not advance civilized standards.