

The Mississippi Supreme Court affirmed the conviction on appeal, rejecting petitioner's contention that the introduction of the testimony in question contravened his rights under the Fourteenth Amendment. It stated that the conduct of the two unidentified officers alleged to have struck and threatened petitioner was, if true, indefensible and warranted condemnation. But it felt that "the issue of fact as well as credibility was for the trial judge upon such preliminary qualification, and we are not willing to disturb his conclusion." — Miss. —, —, 29 So. 2d 211, 212.

This constitutional contention was treated quite differently by the court on the filing of a suggestion of error. It found that petitioner's testimony at the preliminary hearing that he had been threatened prior to making the confession was entirely undisputed in the record. But it also found that petitioner had steadfastly testified, both at the preliminary hearing and at the trial on the merits before the jury, that he did not in fact admit to the city detectives that he had committed the crime. The court then stated: "If the accused had not denied having made any confession at all, we would feel constrained to reverse the conviction herein because of the fact that his testimony as to the threat made to him during the forenoon by the plain clothes men is wholly undisputed, the jailer not having been asked about this threat, and having testified only that he was not struck by anyone in his presence after his arrest for this crime. But, we think that one accused of crime cannot be heard to say that he did not make a confession at all, and at the same time contend that an alleged confession was made under the inducement of fear." — Miss. —, —, 30 So. 2d 74, 75. The suggestion of error was accordingly overruled.

The incomplete record before us precludes our determination of whether petitioner did deny in the trial

court that he had confessed the crime.¹ But assuming that he did so testify, we cannot agree with the court below that he was thereby estopped from asserting his constitutional right to due process of law. The important fact is that the oral confession was introduced, admitted and used as evidence of petitioner's guilt. Not only may this confession have been influential in inducing the jury's verdict, but it formed an essential part of the evidentiary basis of the conviction now under review. His alleged denial of the confession went only to the original issue of whether he actually made the confession, an issue that is no longer open. That question was at most a disputed one; but the jury resolved the matter against petitioner and, like the court below, we accept that determination. The sole concern now is with the validity of the conviction based upon the use of the oral confession.

The due process clause of the Fourteenth Amendment invalidates a state court conviction grounded in whole or in part upon a confession which is the product of other than reasoned and voluntary choice.² A conviction re-

¹ The transcript of the trial on the merits is not before us. At the preliminary hearing on the voluntariness of the confession, the transcript of which is before us, petitioner stated in regard to the alleged confession: "I don't know what all he asked and all I said, but I didn't admit I did it." He also denied having confessed various details of the crime. Such testimony, however, might be construed as nothing more than a layman's inexact way of stating that his answers did not amount to a voluntary confession. But in the absence of the complete record, we express no opinion on the matter.

² *Brown v. Mississippi*, 297 U. S. 278; *Chambers v. Florida*, 309 U. S. 227; *Canty v. Alabama*, 309 U. S. 629; *White v. Texas*, 309 U. S. 631, 310 U. S. 530; *Lomax v. Texas*, 313 U. S. 544; *Vernon v. Alabama*, 313 U. S. 547; *Lisenba v. California*, 314 U. S. 219; *Ward v. Texas*, 316 U. S. 547; *Ashcraft v. Tennessee*, 322 U. S. 143,

sulting from such use of a coerced confession, however, is no less void because the accused testified at some point in the proceeding that he had never in fact confessed, voluntarily or involuntarily. Testimony of that nature can hardly legalize a procedure which conflicts with the accepted principles of due process. And since our constitutional system permits a conviction to be sanctioned only if in conformity with those principles, inconsistent testimony as to the confession should not and cannot preclude the accused from raising the due process issue in an appropriate manner. *White v. Texas*, 310 U. S. 530, 531-532. Indeed, such a foreclosure of the right to complain "of a wrong so fundamental that it made the whole proceeding a mere pretense of a trial and rendered the conviction and sentence wholly void," *Brown v. Mississippi*, 297 U. S. 278, 286, would itself be a denial of due process of law.

The judgment below must be reversed. Since the Mississippi Supreme Court upheld the conviction solely because it thought petitioner was not entitled to raise the constitutional issue, we remand the case to that court so that it may definitively express its views on that issue.

Reversed.

327 U. S. 274; *Lyons v. Oklahoma*, 322 U. S. 596; *Malinski v. New York*, 324 U. S. 401; *Haley v. Ohio*, — U. S. —.

See, in general, Boskey and Pickering, "Federal Restrictions on State Criminal Procedure," 13 U. of Chi. L. Rev. 266, 282-295.

SUPREME COURT OF THE UNITED STATES

No. 91.—OCTOBER TERM, 1947.

Albert Lee, Petitioner, }
 v. } On Writ of Certiorari to the
State of Mississippi. } Supreme Court of the State
 } of Mississippi.

[January 19, 1948.]

MR. JUSTICE MURPHY delivered the opinion of the Court.

This case involves a question of procedure under the due process clause of the Fourteenth Amendment of the United States Constitution. Does a defendant in a state criminal proceeding lose the right to contend that a confession was coerced because of his testimony that the confession was in fact never made?

Petitioner, a 17-year-old Negro, was indicted by a grand jury in Mississippi on a charge of assault with intent to ravish a female of previous chaste character. During the course of the trial, the state offered the testimony of two city detectives as to an alleged oral confession obtained by them from petitioner. Objection was made that this confession had been secured as the result of duress, threats and violence inflicted upon petitioner by two unidentified police officers several hours prior to the confession. The jury retired and a preliminary hearing was held before the trial judge as to the voluntariness of this confession. After various witnesses appeared, including the petitioner himself, the judge concluded that the confession was voluntary and that the testimony in relation thereto was admissible. This testimony proved to be the crucial element leading to the jury's conviction of petitioner. His sentence was fixed at 18 years in prison.

The Mississippi Supreme Court affirmed the conviction on appeal, rejecting petitioner's contention that the introduction of the testimony in question contravened his rights under the Fourteenth Amendment. It stated that the conduct of the two unidentified officers alleged to have struck and threatened petitioner was, if true, indefensible and warranted condemnation. But it felt that "the issue of fact as well as credibility was for the trial judge upon such preliminary qualification, and we are not willing to disturb his conclusion." — Miss. —, —, 29 So. 2d 211, 212.

This constitutional contention was treated quite differently by the court on the filing of a suggestion of error. It found that petitioner's testimony at the preliminary hearing that he had been threatened prior to making the confession was entirely undisputed in the record. But it also found that petitioner had steadfastly testified, both at the preliminary hearing and at the trial on the merits before the jury, that he did not in fact admit to the city detectives that he had committed the crime. The court then stated: "If the accused had not denied having made any confession at all, we would feel constrained to reverse the conviction herein because of the fact that his testimony as to the threat made to him during the forenoon by the plain clothes men is wholly undisputed, the jailer not having been asked about this threat, and having testified only that he was not struck by anyone in his presence after his arrest for this crime. But, we think that one accused of crime cannot be heard to say that he did not make a confession at all, and at the same time contend that an alleged confession was made under the inducement of fear." — Miss. —, —, 30 So. 2d 74, 75. The suggestion of error was accordingly overruled.

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sulting from such use of a coerced confession, however, is no less void because the accused testified at some point in the proceeding that he had never in fact confessed, voluntarily or involuntarily. Testimony of that nature can hardly legalize a procedure which conflicts with the accepted principles of due process. And since our constitutional system permits a conviction to be sanctioned only if in conformity with those principles, inconsistent testimony as to the confession should not and cannot preclude the accused from raising the due process issue in an appropriate manner. *White v. Texas*, 310 U. S. 530, 531-532. Indeed, such a foreclosure of the right to complain "of a wrong so fundamental that it made the whole proceeding a mere pretense of a trial and rendered the conviction and sentence wholly void," *Brown v. Mississippi*, 297 U. S. 278, 286, would itself be a denial of due process of law.

The judgment below must be reversed. Since the Mississippi Supreme Court upheld the conviction solely because it thought petitioner was not entitled to raise the constitutional issue, we remand the case to that court so that it may definitively express its views on that issue.

Reversed.

327 U. S. 274; *Lyons v. Oklahoma*, 322 U. S. 596; *Malinski v. New York*, 324 U. S. 401; *Haley v. Ohio*, — U. S. —.

See, in general, Boskey and Pickering, "Federal Restrictions on State Criminal Procedure," 13 U. of Chi. L. Rev. 266, 282-295.

January 17, 1948

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CHAMBERS OF THE
CHIEF JUSTICE

Memorandum to the Conference:

No. 91 - Lee v. Mississippi

I am making several minor changes in my opinion to meet various suggestions that have been made to me. The parts of the opinion which have been changed will now read:

The important fact is that the oral confession was introduced, admitted and used as evidence of petitioner's guilt. Not only may this confession have been influential in inducing the jury's verdict, but it formed an essential part of the evidentiary basis of the conviction now under review. His alleged denial of the confession went only to the original issue of whether he actually made the confession, an issue that is no longer open. That question was at most a disputed one; but the jury resolved the matter against petitioner and, like the court below, we accept that determination. The sole concern now is with the validity of the confession based upon the use of the oral confession.

The due process clause of the Fourteenth Amendment invalidates a state court conviction grounded in whole or in part upon a confession which is the product of other than reasoned and voluntary choice. A conviction resulting from the use of a coerced confession, however, is no less void because the accused testified at some point in the proceeding that he had never in fact confessed, voluntarily or involuntarily. Testimony of that nature can hardly legalize a procedure which conflicts with the accepted principles of due process. And since our constitutional system requires that a conviction be sanctioned only if in conformity with those principles, inconsistent testimony should not and cannot preclude the accused from raising the due process issue in an appropriate manner. . . .

Frank Murphy

January 15, 1948

Dear Frank:

Re: No. 91 - Lee v. State of
Mississippi

Recirculation of January 14th

I agree.

C.J.

Mr. Justice Murphy

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SUPREME COURT OF THE UNITED STATES

No. 91.—OCTOBER TERM, 1947.

Albert Lee, Petitioner, } On Writ of Certiorari to the
v. } Supreme Court of the State
State of Mississippi. } of Mississippi.

[January —, 1948.]

MR. JUSTICE MURPHY delivered the opinion of the Court.

This case involves a question of fair procedure under the due process clause of the Fourteenth Amendment of the United States Constitution. Does a defendant in a state criminal proceeding lose the right to contend that a confession was coerced because of an inconsistent claim that the confession was in fact never made?

Petitioner, a 17-year-old Negro, was indicted by a grand jury in Mississippi on a charge of assault with intent to ravish a female of previous chaste character. During the course of the trial, the state offered the testimony of two city detectives as to an alleged confession obtained by them from petitioner. Objection was made that this confession had been secured as the result of duress, threats and violence inflicted upon petitioner by two unidentified police officers several hours prior to the confession. The jury retired and a preliminary hearing was held before the trial judge as to the voluntariness of this confession. After various witnesses appeared, including the petitioner himself, the judge concluded that the confession was voluntary and that the testimony in relation thereto was admissible. This testimony proved to be the crucial element leading to the jury's conviction of petitioner. His sentence was fixed at 18 years in prison.

The Mississippi Supreme Court affirmed the conviction on appeal, brushing aside petitioner's contention that the introduction of the testimony in question contravened his rights under the Fourteenth Amendment. It stated that the conduct of the two unidentified officers alleged to have struck and threatened petitioner was, if true, indefensible and warranted condemnation. But it felt that "the issue of fact as well as credibility was for the trial judge upon such preliminary qualification, and we are not willing to disturb his conclusion." — Miss. —, —, 29 So. 2d 211, 212.

This constitutional contention was treated quite differently by the court on the filing of a suggestion of error. It found that petitioner's testimony at the preliminary hearing that he had been threatened prior to making the confession was entirely undisputed in the record. But it also found that petitioner had steadfastly testified, both at the preliminary hearing and at the trial on the merits before the jury, that he did not in fact admit to the city detectives that he had committed the crime. The court then stated: "If the accused had not denied having made any confession at all, we would feel constrained to reverse the conviction herein because of the fact that his testimony as to the threat made to him during the forenoon by the plain-clothes men is wholly undisputed, the jailer not having been asked about this threat, and having testified only that he was not struck by anyone in his presence after his arrest for this crime. But, we think that one accused of crime cannot be heard to say that he did not make a confession at all, and at the same time contend that an alleged confession was made under the inducement of fear." — Miss. —, —, 30 So. 2d 74, 75. The suggestion of error was accordingly overruled.

The incomplete record before us precludes our determination of whether petitioner did deny in the trial

court that he had confessed the crime.¹ But assuming that he did so testify, we cannot agree with the court below that he was thereby estopped from asserting his constitutional right to due process of law. The important fact is that the oral confession was introduced, admitted and used as evidence of petitioner's guilt. And it formed an essential part of the evidentiary basis of the conviction now under review. His alleged denial of the confession went only to the original issue of whether he actually made the confession, an issue that is no longer open. That question was at most a disputed one; but the jury resolved the matter against petitioner and its determination must be accepted since there is substantial supporting evidence. The sole concern now is with the validity of the conviction based upon the use of the oral confession.

The due process clause of the Fourteenth Amendment invalidates a state court conviction grounded in whole or in part upon a confession which is the product of other than reasoned and voluntary choice.² This invalidation

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4 LEE v. MISSISSIPPI.

is a reflection of the fundamental notions of fairness and justice which are among the ingredients of the due process clause. A conviction resulting from the use of a coerced confession, however, is no less void because the accused testified at some point in the proceeding that he had never in fact confessed. Testimony of that nature, inconsistent though it may be alongside the constitutional claim, can hardly legalize a procedure which conflicts with the accepted principles of due process. And since it is so important to our constitutional way of life that a conviction be sanctioned only if in conformity with those principles, inconsistent testimony should not and cannot preclude the accused from raising the due process issue in an appropriate manner. *White v. Texas*, 310 U. S. 530, 531. Indeed, such a foreclosure of the right to complain "of a wrong so fundamental that it made the whole proceeding a mere pretense of a trial and rendered the conviction and sentence wholly void," *Brown v. Mississippi*, 297 U. S. 278, 286, would itself be a denial of due process of law.

The judgment below must be reversed. Since the Mississippi Supreme Court upheld the conviction solely because it thought petitioner was not entitled to raise the constitutional issue, we remand the case to that court so that it may definitively express its views on that issue.

Reversed.

327 U. S. 274; *Lyons v. Oklahoma*, 322 U. S. 596; *Malinski v. New York*, 324 U. S. 401; *Haley v. Ohio*, — U. S. —.

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SUPREME COURT OF THE UNITED STATES OF THE
CHIEF JUSTICE

No. 91.—OCTOBER TERM, 1947.

Albert Lee, Petitioner, } On Writ of Certiorari to the
v. } Supreme Court of the State
State of Mississippi. } of Mississippi.

[January —, 1948.]

MR. JUSTICE MURPHY delivered the opinion of the Court.

This case brings into focus again the impact of the due process clause of the Fourteenth Amendment on the use of an allegedly coerced confession in a state criminal proceeding.

Petitioner, a 17-year old Negro, was indicted by a grand jury in Mississippi on a charge of assault with intent to ravish a female of previous chaste character. During the course of the trial, the state offered the testimony of two city detectives as to an alleged confession obtained by them from petitioner. Objection was made that this confession had been secured as the result of duress, threats and violence inflicted upon petitioner by police officers several hours prior to the confession. The jury retired and a preliminary hearing was held before the trial judge as to the voluntariness of this confession. After various witnesses appeared, the judge concluded that the confession was voluntary and that the testimony in relation thereto was admissible.

The crucial element leading to the jury's conviction of petitioner proved to be the testimony as to this confession. His sentence was fixed at 18 years in prison. The Mississippi Supreme Court affirmed the conviction on appeal, brushing aside petitioner's contention that the introduction of the testimony in question contravened his rights under the Fourteenth Amendment. — Miss. —, 29 So.

2d 211. This constitutional issue was reexamined on the filing of a suggestion of error, but the same conclusion was reached. — Miss. —, 30 So. 2d 74. We granted certiorari to test the result in the light of *Brown v. Mississippi*, 297 U. S. 278, and succeeding cases in this Court.¹

The essential facts regarding the confession are uncontradicted. Petitioner was arrested by the police of Jackson, Mississippi, about midnight, June 6, 1944. Shortly thereafter he was placed in the city jail. The following afternoon, a little after 2 o'clock, petitioner was taken from his cell into the "Work Room," some six by eight feet in size. The door was closed and he was thereupon questioned by two detectives, Rogers and McLeod, at least one of whom was armed. Other officers were present during part of the questioning.

Rogers told petitioner that a free and voluntary statement by him was desired and that anything he might say could be used against him in court. No threats or promises were made and no violence was inflicted during this period. Petitioner then made what purported to be a voluntary confession, detailing the crime of assault with intent to rape. But when he was requested to sign the statement his reply was, "I will sign it if you make me." While admitting that Rogers and McLeod had treated him properly, he claimed that he had been mistreated by certain unidentified police officers that morning. Rogers and McLeod immediately ceased all efforts to obtain petitioner's signature to the confession. Even though

¹ *Chambers v. Florida*, 309 U. S. 227; *Canty v. Alabama*, 309 U. S. 629; *White v. Texas*, 309 U. S. 631, 310 U. S. 530; *Lomax v. Texas*, 313 U. S. 544; *Vernon v. Alabama*, 313 U. S. 547; *Lisenba v. California*, 314 U. S. 219; *Ward v. Texas*, 316 U. S. 547; *Ashcraft v. Tennessee*, 322 U. S. 143, 327 U. S. 274; *Lyons v. Oklahoma*, 322 U. S. 596; *Malinski v. New York*, 324 U. S. 401.

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petitioner exhibited no bruises or other injuries, Rogers stated that "he wouldn't take a statement under those conditions from anybody." Petitioner was then returned to his cell and no other confession was ever made.

At the trial petitioner appeared as a witness on his own behalf and described the events of the morning preceding the alleged confession. He testified that between 9:00 and 9:30 that morning, after being fingerprinted, he had been taken from his cell and brought to the jailer's room. There he was questioned by two heavy-set police officers in plain clothes whose identity he did not know. Neither Rogers nor McLeod was present. One of the unidentified officers had a slip of paper with pencil marks on it. Petitioner's foot was compared with the marks on the paper and the officer commented, "It fits all right, this is the one." Petitioner responded, "No, sir, you have the wrong one, I didn't do anything." Upon reiterating his innocence, petitioner was struck by the officer's fist. He fell back. The officer pulled him up close again and asked, "Did you do it?" Again petitioner replied, "No, sir." Once more the officer struck with his fist, this time hitting petitioner's stomach. Finally, the officer shoved him away with the remark, "If you go down stairs and say you didn't do it, it will be mighty bad for you." Petitioner was then taken back to his cell, where he remained until the questioning in the afternoon by Rogers and McLeod. He testified that, as a result of the foregoing incident, "I was really scared when I went down there [to be questioned by Rogers and McLeod] after the man told me it would be mighty bad for me."

At one point in his testimony, in answer to a question whether the jailer was present at the morning session, petitioner stated, "I don't recall, I am pretty sure he was in there." Young, the jailer, was subsequently called as a witness. The police records indicated that he had been

on duty June 7, 1944, the day in question, but he could not recall any of the events that took place on that day. He was able to say little more than that petitioner's face was familiar and that petitioner had been in the jail at some time. He was certain that petitioner had never been struck in his presence, though he did not testify that he was actually present at any time during the period in the morning when petitioner said he was struck and threatened. Moreover, he admitted that other business might well have called him away from any questioning that might have taken place in his presence. Young also conceded that police officers, in self-defense, had slapped and struck prisoners in his presence.

On the original appeal, the Mississippi Supreme Court stated that the conduct of the two unidentified plain-clothes officers, if true, was indefensible and warranted condemnation. But it felt that "the issue of fact as well as credibility was for the trial judge upon such preliminary qualification, and we are not willing to disturb his conclusion." — Miss. at —, 29 So. 2d at 212. In its opinion on the suggestion of error, however, the court recognized that petitioner's testimony as to the threat was "wholly undisputed in this record." Indeed, it admitted that but for one factor it "would feel constrained to reverse the conviction herein because of the fact that his testimony as to the threat made to him during the forenoon by the plain-clothes men is wholly undisputed, the jailer not having been asked about this threat, and having testified only that he was not struck by anyone in his presence after his arrest for this crime." — Miss. at —, 30 So. 2d at 75. The sole factor that was thought to preclude a reversal of the conviction was petitioner's denial at the trial that he had in fact confessed the crime to Rogers and McLeod in the afternoon. In the court's view, one cannot claim that a confession was coerced and at the same time assert that no confession was ever

made. Such an inconsistent position was held to render futile any attempt to have the confession labeled involuntary and therefore void.

Our prime duty in this case is to make an independent examination of the evidence relating to the voluntariness of the confession. *Chambers v. Florida*, 309 U. S. 227, 228-229. And since the evidence is undisputed in all material respects, the performance of this duty is unaffected by the trial judge's conclusion that the confession was in fact voluntary. *Lisenba v. California*, 314 U. S. 219, 238. In this Court resides the function of ultimately determining whether acknowledged circumstances are such as to make the admission of a confession a denial of the due process of law guaranteed by the Fourteenth Amendment.

The uncontroverted evidence in this proceeding leads us but to one conclusion. That evidence demonstrates that petitioner's confession was thoroughly impregnated with coercion and that its admission was inconsistent with petitioner's constitutional rights. It was undenied that, approximately five hours prior to the confession, petitioner was struck twice by an unidentified officer and was threatened that it would be "mighty bad" for him if he did not confess. The jailer, the sole witness produced who might have disputed petitioner's story, stated only that petitioner never was struck in his presence. But he was unable to remember whether he was present at the time when the blows and threat were said to have occurred. Hence there was no evidence whatever contradicting the claim that two blows were actually struck at the time in question. As to the threat, the Mississippi Supreme Court correctly pointed out that petitioner's testimony was "wholly undisputed in this record."

It is clear, moreover, that the coercive effects of the blows and threat continued until the oral confession was made to Rogers and McLeod some five hours later. Peti-

tioner testified that the events of the forenoon made him "really scared" when he was questioned in the afternoon. Independent evidence as to what transpired at the afternoon session gave substance to that claim. Of his own volition petitioner complained to Rogers and McLeod of the prior mistreatment and stated he would sign the confession only if forced to do so. That was a clear indication that petitioner had made the oral confession only in fear that the prior threat might be carried out and further blows struck. In fact, Rogers and McLeod were sufficiently impressed with petitioner's complaint to drop their efforts to secure his signature to the confession. Rogers, in stating that he would not take a statement under such conditions from anybody, apparently felt that the oral confession had not been voluntarily made.

This case thus differs vitally from *Lyons v. Oklahoma*, 322 U. S. 596. In the *Lyons* case, this Court held that there was sufficient evidence from which the judge and jury could conclude that the coercive elements had been dissipated by the time the confession in issue was made twelve hours later. Here, however, all the evidence tends to indicate that the earlier abuse and threat so dominated petitioner's mind in the afternoon that his confession was involuntary. The mental freedom which characterizes a voluntary confession had not been regained.

That the coercion inflicted upon petitioner was less violent in its physical aspects than in many of the previous cases considered by this Court is without significance. Coercion is not limited to the use of crude, medieval forms of torture. A slap or a light blow, under certain circumstances, may as easily break the will of some persons as a wheel or a thumbscrew. Any form of coercion which destroys the freedom of the mind invalidates a resulting confession. And so in the setting of this case we cannot say that petitioner, a young Negro, was immune from the coercive effects of two blows from a police officer's

erced confession. The issue of whether he actually made a confession to Rogers and McLeod was at most a disputed one. But it was resolved against petitioner by the jury and that determination must be accepted since there was substantial supporting evidence. The making of the confession was therefore established despite petitioner's initial denial. But a deprivation of due process was apparent in the manner in which the confession was obtained and used, a deprivation that resulted in making the conviction void. Petitioner's denial that a confession was ever made could not operate to legalize the procedure or the conviction. Nor could it estop him from asserting his constitutional right to due process of law. The Fourteenth Amendment's guarantee of a fair trial is too important to be ignored by reason of testimony directed to an entirely different issue, however inconsistent such testimony may appear alongside the constitutional claim. When the issue is properly raised and when it appears that the admission of a confession in evidence amounts to a denial of due process, the Constitution requires that the conviction be set aside. Under those circumstances, any inconsistent testimony by the defendant fades into insignificance. *White v. Texas*, 310 U. S. 530, 531.

The judgment below must be reversed.

Reversed.

91

Mr. Chief Justice Vinson

from

Murphy, J

Dec 29

[1948]

Chief —

#191 - Lee etc seems
entirely correct to me as
rewritten by Murphy J.

Stanley Reed

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SUPREME COURT OF THE UNITED STATES
CLERKS OF THE
CHIEF JUSTICE

No. 91.—OCTOBER TERM, 1947.

Albert Lee, Petitioner, } On Writ of Certiorari to the
v. } Supreme Court of the State
State of Mississippi. } of Mississippi.

[January —, 1948.]

MR. JUSTICE REED, with whom MR. JUSTICE FRANK-
FURTER and MR. JUSTICE BURTON join, concurring.

I agree that the judgment of the Supreme Court of Mississippi must be reversed. My conclusion flows solely from an error of law by the Supreme Court for which certiorari was granted. There seems to me no occasion to pass now upon whether the alleged confession was voluntary.

In its opinion on the petitioner's suggestion of error, the state court pointed out that

“the accused steadfastly testified, both upon the hearing before the trial judge in the absence of the jury and on the trial on the merits before the jury, that he did not in fact admit to officers McLeod and Rogers that he had committed the crime. That is to say, he denied having made to them a confession of the details about which they testified.”

McLeod and Rogers were the officers who testified to the oral confession. In the same opinion, the state court refused to consider whether this confession, offered by the state, was freely and voluntarily made in view of previous alleged mistreatment of the accused a short time before by other officers. It said:

“If the accused had not denied having made any confession at all, we would feel constrained to reverse the conviction herein because of the fact that his testimony as to the threat made to him during the

forenoon by the plain clothes men is wholly undisputed, the jailer not having been asked about this threat, and having testified only that he was not struck by anyone in his presence after his arrest for this crime.”

Thus the inconsistency of petitioner’s contentions caused the court to refuse to consider the question of voluntariness.

As the oral confession above referred to was offered by Mississippi and admitted as evidence of the *corpus delicti* and petitioner’s guilt, it was a denial of fair procedure for the Supreme Court to refuse consideration of its character because of petitioner’s inconsistent claims that the confession was coerced and that it was not made. The confession, claimed by petitioner to be coerced, is thus left as part of the evidence upon which guilt was predicated. Before a confession can be used to convict, it must be able to withstand an attack from the accused on the ground that it was obtained by coercion. Otherwise its use as evidence denies procedural due process. *White v. Texas*, 310 U. S. 530, 532.

The Supreme Court of Mississippi indicated its views of the voluntariness of the alleged confession. It should have opportunity, before we consider the character of the confession, to act on the appeal to it after our determination of its error under the Federal Constitution in refusing to consider the question as to whether the confession was coerced.

The Chief Justice
~~of~~
Reed. J.
Recis. 1/2/42

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SUPREME COURT OF THE UNITED STATES

No. 91.—OCTOBER TERM, 1947.

Albert Lee, Petitioner, } On Writ of Certiorari to the
v. } Supreme Court of the State
State of Mississippi. } of Mississippi.

[January —, 1948.]

MR. JUSTICE REED, concurring.

I agree that the judgment of the Supreme Court of Mississippi must be reversed. My conclusion flows solely from an error of law by the Supreme Court for which certiorari was granted. There seems to me no occasion to pass now upon whether the alleged confession was voluntary.

In its opinion on the petitioner's suggestion of error, the state court pointed out that

“the accused steadfastly testified, both upon the hearing before the trial judge in the absence of the jury and on the trial on the merits before the jury, that he did not in fact admit to officers McLeod and Rogers that he had committed the crime. That is to say, he denied having made to them a confession of the details about which they testified.”

McLeod and Rogers were the officers who testified to the oral confession. In the same opinion, the state court refused to consider whether this confession, offered by the state, was freely and voluntarily made in view of previous alleged mistreatment of the accused a short time before by other officers. It said:

“If the accused had not denied having made any confession at all, we would feel constrained to reverse the conviction herein because of the fact that his testimony as to the threat made to him during the forenoon by the plain clothes men is wholly undis-

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CHAMBERS OF THE
CHIEF JUSTICE

puted, the jailer not having been asked about this threat, and having testified only that he was not struck by anyone in his presence after his arrest for this crime.”

Thus the inconsistency of petitioner’s contentions caused the court to refuse to consider the question of voluntariness.

As the oral confession above referred to was offered by Mississippi and admitted as evidence of the *corpus delicti* and petitioner’s guilt, it was a denial of fair procedure for the Supreme Court to refuse consideration of its character because of petitioner’s inconsistent claims that the confession was coerced and that it was not made. The confession, claimed by petitioner to be coerced, is thus left as part of the evidence upon which guilt was predicated. Before a confession can be used to convict, it must be able to withstand an attack from the accused on the ground that it was obtained by coercion. Otherwise its use as evidence denies procedural due process. *White v. Texas*, 310 U. S. 530, 532.

The Supreme Court indicated its preliminary views of the voluntariness of the alleged confession. It should have opportunity to reach its final conclusion before we consider the character of the confession.

The Chief Justice

~~for~~

Reed, J.

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CHAMBERS OF THE
CHIEF JUSTICE

January 3, 1948

Dear Frank:

I should like you to know why I am joining Stanley's mild opinion in No. 91, Lee v. Mississippi.

I do so primarily because it is mild, being strongly of opinion that in a domain where feelings are deeply rooted and easily stirred, a strong conclusion is reenforced by mildness of expression. Long experience on the firing line of dealing with racial problems, first as assistant to Secretary Baker in World War I, and later, until I came down here, as counsel for the Association for the Advancement of the Colored People, has left me with the conviction that while we should deal with those ugly practises of racial discrimination with fearless decency, it does not help toward harmonious race relations to stir our colored fellow citizens to resentment, however unwittingly, by needless detail or even sturdy expression of sentiment, nor do we thereby wean whites from what is so often, in the case of whites both North and South, merely the unanalysed irrational tradition of the past. For myself, I have always thought that the model opinion in these third degree cases involving also racial biases was Brandeis' merely austere recital of the facts in the Wan case, 266 U. S. 1.

I am saying all this because, as you know, I am a great believer in disclosing our views to one another.

Ever yours,

Mr. Justice Murphy

November 17, 1947.

Re: No. 91, Lee v. Mississippi

Memorandum to the Conference:

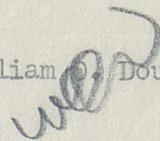
I disagree with Justice Frankfurter that this case should be put down for oral argument.

(1) Unlike White v. Texas, 310 U. S. 530, 531, nt. 2, there is no doubt that Mississippi here has full notice. It has indeed filed a brief on the merits. So there is no possible effrontery to a State in proceeding without oral argument. Mississippi by filing a brief on the merits and then submitting in fact waives her right to be heard.

(2) Nor is this a case where the State controverts the facts presented by petitioner or presents a different version. On page 1 of its brief it accepts petitioner's statement of the facts, challenging only one statement which petitioner makes. See respondent's brief, page 10.

It therefore seems to me that we are in no great need of aid from counsel in determining whether Chambers or Lisenba should be applied.

William O. Douglas



[1948]

Supreme Court of the United States
Washington, D. C.

Let

Dear chief:

Of course, about
Saia.

In the meantime

"
" the odd man is a
" matter of arithmetic -
" odd man is something
else again. Not
declaring all Pet un-

Constitutional is
also very different
from declaring
an Act un-
Constitutional!

Faiguel, J. J.

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