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## Putting the Cat Back in the Bag: Involuntary Confessions and Self-Incrimination

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## **PUTTING THE CAT BACK IN THE BAG: INVOLUNTARY CONFESSIONS AND SELF-INCRIMINATION**

### **COURT OF APPEALS OF NEW YORK**

People v. Guilford<sup>1</sup>  
(decided June 4, 2013)

#### **I. INTRODUCTION**

This case note addresses the distinction between voluntary and involuntary confessions, analyzing their admissibility against defendants based on the self-incrimination clause of the Fifth Amendment.<sup>2</sup> Protection against officially compelled self-incrimination is found in the self-incrimination clause of the Fifth Amendment and its New York State equivalent.<sup>3</sup> This case note discusses what constitutes wrongful custodial interrogation and official coercion, drawing distinctions between voluntary confessions and involuntary confessions. This case note also examines the extent and limits of Fifth Amendment protection offered to criminal defendants by the landmark case *Miranda v. Arizona*<sup>4</sup> and its progeny. Through analyses of both the developmental history and case law precedent behind the test for admitting confessions, this case note determines that the holding of the court in *People v. Guilford* comports with the spirit of the self-incrimination clause of the Fifth Amendment, thus, affording the defendant the constitutional protection guaranteed under it.

#### **II. FACTUAL & PROCEDURAL BACKGROUND**

In *People v. Guilford*, the defendant, James E. Guilford, was

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<sup>1</sup> 991 N.E.2d 204 (N.Y. 2013).

<sup>2</sup> U.S. CONST. amend. V.

<sup>3</sup> U.S. CONST. amend. V (stating in pertinent part: “no person...shall be compelled in any criminal case to be a witness against himself.”); N.Y. CONST. Art. I, §6 (stating in pertinent part that “[n]o person shall . . . be compelled in a criminal case to be a witness against himself or herself”).

<sup>4</sup> 384 U.S. 436 (1966).

taken into police custody on the evening of March 20, 2007, on the suspicion of murdering his mistress, Sharon Nugent.<sup>5</sup> The defendant was read his *Miranda* rights and was confined in a windowless, clock-less, sparsely furnished interrogation room.<sup>6</sup> Aside from escorted bathroom breaks, the defendant remained in this room for forty-nine and one-half hours.<sup>7</sup> During his interrogation, the defendant was denied food and rest, while relay teams of investigators took periodic breaks in between rounds of questioning.<sup>8</sup>

On the evening of March 21, 2007, the defendant made the statement, “[O]nly me, God, and Sharon know what happened to her.”<sup>9</sup> The following evening, the defendant stated that he would “give everyone what they want,” so long as he could confer with the District Attorney and have an attorney of his own present.<sup>10</sup> Additionally, investigators promised the defendant that he would be given a deal for a lighter sentence if he disclosed the location of the victim’s body.<sup>11</sup> As promised, counsel for the defendant arrived on the evening of March 22.<sup>12</sup> Counsel, however, was never told of how long the interrogation had lasted up to that point.<sup>13</sup>

The defendant’s forty-nine and one half hour interrogation ended eight hours prior to his confession.<sup>14</sup> With his counsel present, the defendant’s interrogation concluded at 1:30 a.m. on March 23.<sup>15</sup> It was only at that point that the defendant was formally arrested.<sup>16</sup> The defendant was then allowed an eight hour rest before his arraignment at 9:30 a.m. that morning.<sup>17</sup> Two hours later, at 11:30 a.m., the defendant confessed to the murder and stated to investigators, “I killed her.”<sup>18</sup> A later search of the location said to contain the victim’s remains was fruitless and, subsequently, the defendant’s case

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<sup>5</sup> *Guilford*, 991 N.E.2d at 205.

<sup>6</sup> *Id.* at 207.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Guilford*, 991 N.E.2d at 207.

<sup>11</sup> *Id.* at 208.

<sup>12</sup> *Id.* at 207-8.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 209.

<sup>15</sup> *Guilford*, 991 N.E.2d at 208.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

went to trial.<sup>19</sup> Based on the confession made on March 23, the defendant was convicted of murder in Onondaga County Court.<sup>20</sup>

On appeal, the defendant argued that his confession was inadmissible because not only was his interrogation wrongful, but also there was no “pronounced break” in time between his interrogation and confession.<sup>21</sup> The Appellate Division, Fourth Department affirmed, holding that the gap in time between the conclusion of the interrogation and the confession was sufficient to restore the defendant’s state of mind to that of someone who had not been interrogated.<sup>22</sup> After that decision, the defendant further appealed to the New York State Court of Appeals, where the Appellate Division’s decision was reversed and a new trial was ordered in accordance with that decision.<sup>23</sup>

The defendant was in police custody for the duration of his interrogation; during this time, officials deprived the defendant of essential human needs like food and rest, thereby, placing the defendant under the influence of official coercion and, thus, his interrogation was wrongful.<sup>24</sup> After it was established that a wrongful interrogation had occurred, the court decided whether the defendant’s confession was voluntary.<sup>25</sup> To make this determination, the court considered whether the eight hours elapsed between the end of the defendant’s interrogation and his confession was enough time to purge his mind of the influence of the wrongful questioning.<sup>26</sup> The court followed New York State and federal precedent by examining the “totality of the circumstances” leading up to the defendant’s confession.<sup>27</sup> The court determined that the eight-hour break was insufficient to distinguish the interrogation and confession as two distinct events.<sup>28</sup> As a result, the court ruled that the defendant’s confession on March 23 was inadmissible at trial because it was involuntarily made while he was still under the influence of official coercion from

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<sup>19</sup> *Id.*

<sup>20</sup> *Guilford*, 991 N.E.2d at 208.

<sup>21</sup> *Id.* at 205.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 207.

<sup>25</sup> *Guilford*, 991 N.E.2d at 206.

<sup>26</sup> *Id.* at 209.

<sup>27</sup> *Id.* at 206.

<sup>28</sup> *Id.* at 209-10.

the wrongful interrogation.<sup>29</sup>

### III. ANALYSIS OF FEDERAL PRECEDENT FOLLOWED BY THE COURT

#### A. Voluntariness

In reaching its decision, the court in *Guilford* cited the United States Supreme Court case *Ashcraft v. Tennessee*.<sup>30</sup> In *Ashcraft*, the Court reasoned that interrogation techniques, like lengthy questioning without rest for the suspect, may constitute elements of a wrongful interrogation.<sup>31</sup> The Court further decided that the use of these techniques by officials to bring about a confession constituted official coercion.<sup>32</sup>

In *Ashcraft*, the defendant was charged with the murder of his wife.<sup>33</sup> The facts in *Ashcraft* were conflicted as to the defendant's exact treatment during the interrogation, but it was uncontroverted that he had been interrogated for thirty-six hours without rest.<sup>34</sup> In addition, there was conjecture as to whether an incriminating statement was made.<sup>35</sup> In *Ashcraft*, the Court recognized that regardless of whether a confession was made, the interrogation was wrongful because of the length of time the interrogation continued without a break.<sup>36</sup> The Court held that any statements made by the defendant were involuntary and could not be used against him.<sup>37</sup> The court in *Guilford* relied on *Ashcraft* in its decision, reasoning that that the defendant, like the defendant in *Ashcraft*, had been subjected to a wrongful interrogation because of his forty-nine and one-half hour interrogation without rest.<sup>38</sup> Because the interrogation was found to be wrongful, the court in *Guilford* next turned to the issue of voluntariness.

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<sup>29</sup> *Id.* at 209.

<sup>30</sup> 322 U.S. 143 (1944).

<sup>31</sup> *Id.* at 155.

<sup>32</sup> *Id.* at 153.

<sup>33</sup> *Id.* at 148.

<sup>34</sup> *Id.* at 149.

<sup>35</sup> *Ashcraft*, 322 U.S. at 151-52.

<sup>36</sup> *Id.* at 154.

<sup>37</sup> *Id.*

<sup>38</sup> *Guilford*, 991 N.E.2d at 208.

### B. The “Totality of the Circumstances” Test

To determine the issue of voluntariness, the court in *Guilford* turned to the United States Supreme Court case *Clewis v. Texas*.<sup>39</sup> The Court found that the “totality of the circumstances” was the appropriate test to assess whether a confession made after, or during, a wrongful interrogation was voluntary or involuntary.<sup>40</sup> In *Clewis*, the defendant was charged with murder.<sup>41</sup> He was held for nine days and was deprived of sufficient food, sleep, and visits from family and counsel.<sup>42</sup> The defendant made three confessions on three separate days during his nine day interrogation.<sup>43</sup> The Court reasoned that the defendant’s interrogation was wrongful because of its length and because the defendant was not given adequate rest between the periods of questioning.<sup>44</sup> As a result, the Court found that the interrogation and confession were part of one continuous ordeal for the defendant rather than separate and distinct events.<sup>45</sup> Given the “totality of the circumstances,” the Court held that the defendant in *Clewis* was still under the influence of official coercion when he signed his final statement, and it was, therefore, not given voluntarily.<sup>46</sup>

The court in *Guilford* applied “the totality of the circumstances” test to the defendant’s confession.<sup>47</sup> The court determined that although the defendant had been given a chance to rest after the end of his interrogation at 1:30 a.m., the time between then and his confession at 11:30 a.m. was not sufficient to distinguish the two events from one another.<sup>48</sup> In making that decision, the court considered the circumstances surrounding the defendant’s previous forty-nine and one-half hour interrogation.<sup>49</sup> The court reasoned that given the length of his prior interrogation, the eight hour break was inadequate to purge the influence of official coercion from the defendant’s mind

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<sup>39</sup> 386 U.S. 707 (1967).

<sup>40</sup> *Id.* at 708; see *Fikes v. Alabama*, 352 U.S. 191, 197 (1957) (holding the “totality of the circumstances” must be assessed to reach a determination of the voluntariness of a confession).

<sup>41</sup> *Clewis*, 386 U.S. at 707.

<sup>42</sup> *Id.* at 709-10.

<sup>43</sup> *Id.* at 710.

<sup>44</sup> *Id.* at 711.

<sup>45</sup> *Id.*

<sup>46</sup> *Clewis*, 386 U.S. at 711.

<sup>47</sup> *Guilford*, 991 N.E.2d at 209.

<sup>48</sup> *Id.* at 207.

<sup>49</sup> *Id.* at 208.

at the time of his confession.<sup>50</sup> The court reasoned that “the break” allotted to the defendant may have further weakened his mental condition by prolonging his time in custody.<sup>51</sup>

The United States Supreme Court offered a different view in *Oregon v. Elstad*.<sup>52</sup> In *Elstad*, the Court held that absent actual coercion, i.e., physical compulsion, late *Miranda* warnings are sufficient to dissipate the influence of a prior wrongful interrogation and subsequent confession.<sup>53</sup> However, the facts of *Guilford* were distinguished from *Elstad* by the court.<sup>54</sup>

The defendant in *Elstad* confessed at his home before he had been formally arrested or given his *Miranda* rights.<sup>55</sup> It was only later, at the sheriff’s headquarters, that *Miranda* rights were administered.<sup>56</sup> Afterwards, a second confession was given.<sup>57</sup> The Court held that the first confession did not adversely affect the defendant’s mind so as to render the second confession involuntary because there was never any actual coercion.<sup>58</sup> In *Guilford*, the defendant was subjected to actual coercion and was given a prompt *Miranda* warning.<sup>59</sup> In contrast to *Elstad*, the court in *Guilford* held that given the totality of the circumstances, these factors did not weigh as heavily and were deemed inadequate to dissipate the influence of the wrongful interrogation.<sup>60</sup>

### C. *Miranda*’s Limits

The Court in *Miranda* explained that one of the safeguards to a defendant’s right against self-incrimination was the presence of counsel.<sup>61</sup> Based on that rationale, any confession made in the pres-

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<sup>50</sup> *Id.* at 209.

<sup>51</sup> *Id.*

<sup>52</sup> 470 U.S. 298 (1985).

<sup>53</sup> *Id.* at 311-12.

<sup>54</sup> *Guilford*, 991 N.E.2d at 206.

<sup>55</sup> *Elstad*, 470 U.S. at 301.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.* at 311-12; see *United States v. Bayer*, 331 U.S. 532, 540 (1947) (stating that “after an accused has once ‘let the cat out of the bag’ by confessing, no matter what the inducement, he is never thereafter free of psychological and practical disadvantages of having confessed.”).

<sup>59</sup> *Guilford*, 991 N.E.2d at 206.

<sup>60</sup> *Id.* at 210.

<sup>61</sup> *Miranda*, 384 U.S. at 466.

ence of counsel would be considered voluntary. In *Guilford*, the court decided that the presence of counsel did not “neutraliz[e] the effects of extensive coercive interrogation.”<sup>62</sup> The court came to its conclusion, in part, because investigators had “made a deal” with the defendant to disclose the location of the victim’s body in exchange for allowing him the assistance of counsel.<sup>63</sup> The court reasoned that when the defendant gave his confession, he was influenced by the coercive deal made by investigators.<sup>64</sup> Further influencing the court’s decision, counsel for the defendant was appointed well after his interrogation had been underway.<sup>65</sup> Counsel was not fully aware of the duration of the defendant’s interrogation and was mistrusted by the defendant; thus, based on *Miranda*, the defendant’s confession could not be considered voluntary.<sup>66</sup>

#### IV. ANALYSIS OF NEW YORK PRECEDENT FOLLOWED BY THE COURT

##### A. *Chapple-Bethea* Doctrine

The court in *Guilford* applied the New York State *Chapple-Bethea* Doctrine in its analysis.<sup>67</sup> This doctrine was forged out of the consolidation of the holdings of two New York Court of Appeals cases: *People v. Chapple*<sup>68</sup> and *People v. Bethea*.<sup>69</sup> In *Chapple*, the court reasoned that the coercive effects of a wrongful interrogation must be neutralized in the mind of the defendant before he is able to give a voluntary confession.<sup>70</sup> The court decided that in order for a wrongful interrogation’s influence to wear off, there must be a “pronounced break” between questioning and confession.<sup>71</sup> The defendant in *Chapple* was walking alongside a highway at night when he was approached and questioned by a police officer regarding a recent

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<sup>62</sup> *Guilford*, 991 N.E.2d at 210.

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Guilford*, 991 N.E.2d at 206.

<sup>68</sup> 341 N.E.2d 243 (N.Y. 1975).

<sup>69</sup> 493 N.E.2d 937 (N.Y. 1986).

<sup>70</sup> *Chapple*, 341 N.E.2d at 245-46; see *People v. Paulman*, 833 N.E.2d 239, 245 (N.Y. 2005) (finding that the defendant’s confession was voluntary because he was not in custody at the time nor were his statements coaxed through wrongful means by the authorities).

<sup>71</sup> *Chapple*, 341 N.E.2d at 245-46.



burglary.<sup>72</sup> He was taken to the scene of the burglary and confessed to the crime.<sup>73</sup> The defendant was then immediately brought to the police station, read his rights and reiterated his false confession.<sup>74</sup> The defendant stated that he confessed to a crime that he was innocent of out of fear because an officer threatened him with physical force.<sup>75</sup> The court held that, in this instance, a late *Miranda* warning was an inadequate means of safeguarding the defendant's rights.<sup>76</sup> Because there was no "pronounced break" in time between the initial interrogation and the second confession, the influence of the official coercion and initial confession was not removed from the defendant's mind.<sup>77</sup>

Likewise, in *Bethea*, the court held that statements made by the defendant while he was being transported to the police station were made involuntarily.<sup>78</sup> The court explained that the proximity in time between the defendant's initial statements in the police car, before his rights were administered, and the statements made at the station, after his rights were read, was too close to remove the influence of the "premature" confession from his mind.<sup>79</sup> The court in *Bethea* found that there was a continuous sequence of events extending from the arrest to the defendant's uninformed confession in the police car and his second informed confession in the police station.<sup>80</sup> For that reason, the court held that the defendant's mind was never able to "reset" after his first uninformed confession and, thus, both confessions were suppressed.<sup>81</sup> In *Guilford*, although the *Miranda* warning was given prior to the interrogation, the court reasoned that the eight hour break in time between the coercive interrogation and the confession was not a "pronounced break."<sup>82</sup> As a result, there was insufficient time to remove the wrongful interrogation's undue influence from the defendant's mind.<sup>83</sup> Under the *Chappel-Bethea* doctrine, the

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<sup>72</sup> *Id.* at 244.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Id.* at 245.

<sup>76</sup> *Chapple*, 341 N.E.2d at 245.

<sup>77</sup> *Id.* at 246.

<sup>78</sup> *Bethea*, 493 N.E.2d at 939.

<sup>79</sup> *Id.* at 938-39.

<sup>80</sup> *Id.* at 939.

<sup>81</sup> *Id.*

<sup>82</sup> *Guilford*, 991 N.E.2d at 209.

<sup>83</sup> *Id.*

defendant's confession was not considered voluntary because there was never a "pronounced break" between his initial interrogation and subsequent confession that could have reset his mental condition to that of one not subjected to a wrongful confession.<sup>84</sup>

### B. Voluntariness Beyond a Reasonable Doubt

In assessing the applicable standard of proof, the court in *Guilford* applied the New York State Court of Appeals case *People v. Anderson*.<sup>85</sup> In *Anderson*, the court held that the People bear the burden to prove beyond a reasonable doubt the voluntariness of any confession made by the defendant.<sup>86</sup> The defendant in *Anderson* was held for nineteen hours while he was questioned about a friend's murder.<sup>87</sup> During his interrogation, the defendant was questioned in relays by investigators and eventually confessed after he was deprived of sleep and food.<sup>88</sup> The defendant's confession in *Anderson* was suppressed at trial because the People failed to show that the confession was given voluntarily.<sup>89</sup> Another case discussed by the court on this point was *People v. Valerius*.<sup>90</sup> Here, the New York Court of Appeals held that because the People failed to produce evidence to the contrary of the defendant's allegations that the confession was coerced by means of physical and mental abuse, the People failed to prove its case beyond a reasonable doubt; thus, the defendant's confession was excluded as involuntary.<sup>91</sup> In *Guilford*, the court reasoned that the People had failed to meet its burden because doubt remained as to whether the influence of the wrongful interrogation remained in the mind of the defendant as he gave his confession.<sup>92</sup>

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<sup>84</sup> *Id.* at 206, 209.

<sup>85</sup> 364 N.E.2d 1318 (N.Y. 1977).

<sup>86</sup> *Id.* at 1320.

<sup>87</sup> *Id.* at 1321.

<sup>88</sup> *Id.*

<sup>89</sup> *Id.* at 1322.

<sup>90</sup> 286 N.E.2d 254 (N.Y. 1972)

<sup>91</sup> *Id.* at 256.

<sup>92</sup> *Guilford*, 991 N.E.2d at 206, 210; *see* *People v. Huntley*, 204 N.E.2d 179 (N.Y. 1965) (holding that before a confession may be submitted to the jury, the judge must determine its voluntariness beyond a reasonable doubt and that if the prosecutor desires to offer the confession as evidence at the trial, the defense should be provided notice; conversely, if the defense intends to contest the voluntariness of the confession was involuntary, notice shall be given to the prosecutor so that a pre-trial *Huntley* hearing may be held on the matter).

The court in *Guilford* appropriately held that the People did not prove its burden beyond a reasonable doubt as to the voluntariness of the defendant's confession.<sup>93</sup> When taking into consideration the totality of the circumstances, the eight hour break between the end of the interrogation and the defendant's confession was clearly not a "pronounced break" that would allow for differentiation between the wrongful forty-nine and one-half hour interrogation and the defendant's confession eight hours later.<sup>94</sup> The argument that the presence of counsel and the timely administration of *Miranda* warnings are sufficient means to render the defendant's confession voluntary is inadequate given that the defendant's mind had already been influenced by the time counsel arrived.<sup>95</sup> Moreover, the mere presence of counsel is not enough to guarantee a defendant's right against self-incrimination, especially if counsel is not trusted by his client and lacks important details of the situation.<sup>96</sup> The court's holding, therefore, lends further support to preserving defendant's rights against self-incrimination.

## V. LEGISLATIVE AND JUDICIAL HISTORY

The self-incrimination clause of the Fifth Amendment protects criminal suspects from official compulsion designed to compel an incriminating statement that could be used against them.<sup>97</sup> Beginning with the United States Supreme Court case *Bram v. United States*,<sup>98</sup> early American case law held that distinguishing whether a confession was voluntary or involuntary was the test to determine its admissibility into evidence.<sup>99</sup> The Court found that statements used to convict the defendant in *Bram* were attained by confusing the defendant rather than by the defendant's own volition.<sup>100</sup> Thus, the Court held that the confession was involuntary and in violation of the self-incrimination clause of the Fifth Amendment because the de-

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<sup>93</sup> *Guilford*, 991 N.E.2d at 210.

<sup>94</sup> *Id.* at 210.

<sup>95</sup> *Id.* at 208.

<sup>96</sup> *Id.*

<sup>97</sup> U.S. CONST. amend. V (stating in pertinent part that "[n]o person . . . shall be compelled in any criminal case to be a witness against himself").

<sup>98</sup> 168 U.S. 532 (1897).

<sup>99</sup> *Id.* at 564.

<sup>100</sup> *Id.* at 562 (stating that the witness could not have seen the defendant commit the crime from the vantage point the witness claims to have been at).

fendant had been compelled into being a witness against himself.<sup>101</sup>

Not all scholars agree that the foundation for the admissibility of a confession is rooted in the concept of voluntariness found in the Fifth Amendment's self-incrimination clause. One commentator disagreed with the proposition that the defendant's volition should be the test for admissibility of confessions and criticized the decision of the Court in *Bram* in his article *Rethinking the Involuntary Confession Rule*.<sup>102</sup> In this article, the author argued that the requirement for voluntariness is not found in the self-incrimination clause.<sup>103</sup> He opined that a test based in voluntariness is unworkable due to the impossibility of accurately determining a defendant's state of mind.<sup>104</sup> Instead, the author advocated for a new workable test for identifying compelled confessions on a case-by-case basis based on the conduct of the interrogator.<sup>105</sup> This test is based on the prohibition of compulsion found in the self-incrimination clause.<sup>106</sup> The proposed test is an "objective penalty" standard, which measures compulsion based on whether an official has "impose[d] a penalty on a suspect to either punish silence or provoke speech."<sup>107</sup> Currently, no such test has been implemented by case law and, as such, the "objective penalty" standard remains a novel take on determining the admissibility of a confession.

The next major judicial development of the self-incrimination clause came in the landmark case *Miranda v. Arizona*.<sup>108</sup> In *Miranda*, the Court found that when a suspect is taken into custody and questioned, he must be procedurally informed of his rights by way of a set of prophylactic warnings; these procedural safeguards are now popularly known as *Miranda* warnings.<sup>109</sup> This case illustrated a shift in

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<sup>101</sup> *Id.* at 564.

<sup>102</sup> Mark A. Godsey, *Rethinking the Involuntary Confession Rule: Towards A Workable Test For Identifying Compelled Self-Incrimination*, 93 CAL. L. REV. 467, 515 (2005) (stating in pertinent part that an objective measurement of compulsion rather than a subjective measurement of voluntariness is the proper test to determine the admissibility of a confession).

<sup>103</sup> *Id.* at 471.

<sup>104</sup> *Id.* at 468-69.

<sup>105</sup> *Id.* at 515.

<sup>106</sup> *Id.* at 538.

<sup>107</sup> Godsey, *supra* note 102, at 515-16.

<sup>108</sup> *Miranda*, 384 U.S. at 436.

<sup>109</sup> *Id.* at 479 (stating that the defendant has a "right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires.").

the Court's emphasis in *Bram* from a test based solely on voluntariness to a test based on in part on voluntariness and compulsion when considering the admissibility of a confession.<sup>110</sup>

Following the wake of *Miranda*, Congress passed Section 3501 in Title 18 of the United States Code.<sup>111</sup> This statute concerned the admissibility of confessions, but omitted any references to *Miranda* warnings as a means to determine admissibility.<sup>112</sup> Instead, the statute emphasized voluntariness alone, as opposed to compulsion, as the deciding factor concerning the admissibility of a confession and removed any aspect of compulsion from the analysis.<sup>113</sup>

The next major development in case law concerning the admissibility of a confession arose in 2000 in the United States Supreme Court case *Dickerson v. United States*.<sup>114</sup> In this case, the Court held that *Miranda* was constitutionally based and, thus, could not be superseded by a legislative act.<sup>115</sup> This decision effectively overruled Section 3501, re-establishing *Miranda* warnings as a defendant's primary safeguard against coaxed or coerced confessions.<sup>116</sup> Therefore, the current applicable rule to determine the admissibility of a confession could be summarized as being rooted in the self-incrimination clause of the Fifth Amendment, which in turn is reinforced by the decision in *Miranda* and enforced in practice by the administration of *Miranda* warnings to those in custody.

## VI. FEDERAL HISTORICAL BACKGROUND

The federal precedent leading up to this modern rule can be highlighted by a number of significant United States Supreme Court cases. With regard to physical coercion, the United States Supreme Court decided, in *Brown v. State of Mississippi*,<sup>117</sup> that no physical coercion is permitted to elicit a defendant's confession.<sup>118</sup> In this case, the only evidence against the defendants was their confes-

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<sup>110</sup> Godsey, *supra* note 102, at 501.

<sup>111</sup> 18 U.S.C. § 3501 (2013).

<sup>112</sup> 18 U.S.C. § 3501(b).

<sup>113</sup> *Id.*

<sup>114</sup> 530 U.S. 428 (2000).

<sup>115</sup> *Id.* at 444.

<sup>116</sup> *Id.*

<sup>117</sup> 297 U.S. 278 (1936).

<sup>118</sup> *Id.* at 287.

sions.<sup>119</sup> Further, it was undisputed that these confessions were obtained after what could only be described as torture by the authorities.<sup>120</sup> The Court's rationale in this case was that these confessions obtained by physical coercion could not be considered voluntary confessions.<sup>121</sup>

As to the mental state of the defendant, the United States Supreme Court quipped in the case *United States v. Bayer*<sup>122</sup> that once the defendant "let the cat out of the bag," he could not get it back in.<sup>123</sup> This colorful comment pertains to the defendant's mental state after he has given an initial involuntary confession followed by a second confession which on its face seemed voluntary. The Court, however, does not preclude the admission of a confession made by the same defendant if his original "pre-confession" mental state had been restored.<sup>124</sup> In contrast to *Guilford*, the Court reasoned in *Bayer* that the defendant's second confession was voluntary and admissible because the six month span of time between confessions was a sufficient length of time to restore the mindset of the defendant to its "pre-confession" condition.<sup>125</sup> The Court explained that any confession given after the defendant's "pre-confession" mental state had been restored would have been given of the defendant's own volition, not as a result of any coercive actions on the part of authorities, and would thus be admissible.<sup>126</sup>

The idea that a defendant should be restored to his "pre-confession" condition is evident in the case *Wong Sun v. United States*.<sup>127</sup> Here, the United States Supreme Court found that a confession given by the defendant several days after his initial arrest was admissible because the confession was not gained by exploiting the illegal arrest but rather was given by the defendant out of his own volition.<sup>128</sup> In this case, the Court opined that due to the lengthy break in time, the connection of the confession to the wrongful interroga-

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<sup>119</sup> *Id.*

<sup>120</sup> *Id.* at 281-82 (stating that the defendants, all African-American men, were either hung until near death or whipped before their confessions were obtained).

<sup>121</sup> *Id.* at 287.

<sup>122</sup> *Bayer*, 331 U.S. 532 (1947).

<sup>123</sup> *Id.* at 540.

<sup>124</sup> *Id.* at 540-41.

<sup>125</sup> *Id.* at 541.

<sup>126</sup> *Id.* at 540-41.

<sup>127</sup> 371 U.S. 471 (1963).

<sup>128</sup> *Id.* at 491.

tion had “become so attenuated as to dissipate the taint” of the first illegal arrest and questioning.<sup>129</sup>

Regarding the limitations of *Miranda* warnings, the United States Supreme Court case *New York v. Quarles*<sup>130</sup> created an exception to the practice that a *Miranda* warning must be administered.<sup>131</sup> In *Quarles*, the Court held that *Miranda* warnings may be omitted by an official before questioning a suspect if public safety is an immediate concern.<sup>132</sup> In this case, the Court found that the officer’s query as to the location of the defendant’s hidden gun was appropriate even if formal *Miranda* warnings had not yet been administered because there was still of an appreciable threat posed to the public via the unknown whereabouts of a firearm.<sup>133</sup>

A further limitation to *Miranda* was set forth by the United States Supreme Court in *Brown v. Illinois*.<sup>134</sup> Here, the Court reasoned that *Miranda* warnings alone do not expunge the adverse effects of an illegal arrest and any subsequent confessions made.<sup>135</sup> In *Brown*, the Court found that when *Miranda* warnings had been administered but the voluntariness of a confession was still in doubt, then it was appropriate to assess the totality of the circumstances to determine admissibility on a case-by-case basis.<sup>136</sup> Here, the Court placed the burden of demonstrating voluntariness on the prosecution.<sup>137</sup> In this case, the Court found that the defendant’s two confessions were results of his wrongful arrest, and because only two hours had elapsed between his arrest and his first confession, the Court ruled that there had not been enough time to expunge the adverse effects of the illegal arrest from his mind before he gave his second confession.<sup>138</sup>

The federal approach to determining the admissibility of a defendant’s confession could thus be summarized as an assessment of

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<sup>129</sup> *Id.*; see also *Nardone v. United States*, 308 U.S. 338, 341 (1939) (explaining that where the connection between the confession and the wrongful act of obtaining it have become “so attenuated as to dissipate the taint” then any confession given thereafter would be deemed voluntarily given).

<sup>130</sup> 467 U.S. 649 (1984).

<sup>131</sup> *Id.* at 653.

<sup>132</sup> *Id.*

<sup>133</sup> *Id.* at 652-53.

<sup>134</sup> 422 U.S. 590 (1975).

<sup>135</sup> *Id.* at 603.

<sup>136</sup> *Id.* at 603-04.

<sup>137</sup> *Id.* at 604.

<sup>138</sup> *Id.* at 604-05.

the totality of the circumstances surrounding the confession's origins taking specific notice of the presence of any physical coercion present in the interrogation and the mindset of the defendant while making said confession. If the defendant is found to still be under the influence of a wrongful arrest or questioning, then his confession will be suppressed as being involuntary. This approach ensures that no defendant is compelled to give evidence against himself and is in harmony with the Fifth Amendment.

## VII. NEW YORK STATE HISTORICAL BACKGROUND

The New York precedent leading up to *Guilford* is nearly identical to federal precedent and can be highlighted through several New York Court of Appeals decisions and Appellate Division cases. In the state law cognate of *Brown v. Mississippi*, the New York Court of Appeals case *People v. Weiner*<sup>139</sup> held that confessions need to be made voluntarily if they are to be considered admissible.<sup>140</sup> In this case, the defendant was threatened with physical force by police officers until a confession was obtained.<sup>141</sup> In *Weiner*, the court reasoned that the defendant's confession was made only out of fear of physical threats and, thus, suppressed the confession as being involuntary.<sup>142</sup>

In another case, *People v. Yukl*,<sup>143</sup> the Court of Appeals addressed the mindset of the defendant and decided that *Miranda* rights could be waived voluntarily and, thus, any confession made thereafter was a voluntary confession.<sup>144</sup> In *Yukl*, the defendant was informed of his *Miranda* rights and began to cooperate with police in the investigation of a murder.<sup>145</sup> Through the defendant's cooperation, the police were able to determine that he was the killer.<sup>146</sup> The court explained that a reasonable person would have recognized that he was in custody at the time; therefore, through his cooperation, the

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<sup>139</sup> 161 N.E. 441 (N.Y. 1928).

<sup>140</sup> *Id.* at 443.

<sup>141</sup> *Id.* at 442 (stating that the defendant was physically assaulted and threatened by officers before giving his confession).

<sup>142</sup> *Id.* at 442-43.

<sup>143</sup> 256 N.E.2d 172 (N.Y. 1969).

<sup>144</sup> *Id.* at 174, 175.

<sup>145</sup> *Id.* at 172-73.

<sup>146</sup> *Id.* at 173.



defendant waived his *Miranda* rights.<sup>147</sup>

Like the federal courts, the New York courts follow the rationale that the “taint” of illegal arrest or illegal questioning may be purged from the mind of the defendant, thus, allowing a voluntary confession to be given. Illustrating this point is the Appellate Division, Fourth Department case *People v. Strong*.<sup>148</sup> In *Strong*, the court found in favor of the People after the defendant made his confession four hours after his illegal arrest and after two sets of *Miranda* warnings had been given.<sup>149</sup> The court reasoned that there was a sufficient amount of time between his illegal arrest and his confession to “reset” his mind and render his confession voluntary; thus, the statements were not “obtained by exploitation of the illegal arrest.”<sup>150</sup>

A similar decision to *Strong* is the Appellate Division, Second Department case *People v. Alexander*.<sup>151</sup> Here, in contrast to the decision in *Guilford*, the court found that eleven hours was a sufficient amount of time to purge the effects of the wrongful interrogation from the mind of the defendant.<sup>152</sup> This decision was based on the fact that the defendant had been given his *Miranda* warnings in a timely manner and had waived those rights prior to questioning.<sup>153</sup> More importantly, the confession was given by the defendant to a new detective about an unrelated subject eleven hours after his initial arrest and after he had been shown surveillance video of himself committing the crime.<sup>154</sup>

On the other hand, the Second Department found in *People v. Clark*<sup>155</sup> that the defendant’s confession was gained by means of exploiting his illegal arrest and, therefore, the confession given should be suppressed.<sup>156</sup> In *Clark*, the defendant was arrested without probable cause, interrogated, and given a polygraph test, which he failed.<sup>157</sup> After being informed of the results of the polygraph test,

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<sup>147</sup> *Id.* at 175.

<sup>148</sup> 794 N.Y.S.2d 258 (App. Div. 4th Dep’t 2005).

<sup>149</sup> *Id.* at 258.

<sup>150</sup> *Id.*

<sup>151</sup> 882 N.Y.S.2d 473 (App. Div. 2d Dep’t 2009).

<sup>152</sup> *Id.* at 475.

<sup>153</sup> *Id.* at 473.

<sup>154</sup> *Id.* at 475.

<sup>155</sup> 540 N.Y.S.2d 328 (App. Div. 2d Dep’t 1989).

<sup>156</sup> *Id.* at 329-30.

<sup>157</sup> *Id.* at 329.

the defendant confessed.<sup>158</sup> The court found that because it was unclear what procedures were used to elicit the confession, then the confession must have been given involuntarily; the People failed to meet their burden and demonstrate that the confession was given voluntarily.<sup>159</sup> Another case supporting this point is *People v. Pitsley*.<sup>160</sup> Here, the Appellate Division, Fourth Department explained that because there was no significant intervening event between the wrongful arrest and the defendant's confession, the confession should be excluded.<sup>161</sup>

Thus, the state approach to determining the admissibility of a confession mirrors the federal approach. The New York approach prohibits the admission of physically coerced confessions and takes into account the totality of circumstances surrounding the making of the confession. The court will analyze these factors in order to ensure that the confession was not given while the defendant was under the influence of wrongful questioning or wrongful arrest thus ensuring that the confession was given voluntarily.

### VIII. CONCLUSION

The court in *Guilford* correctly held that the defendant's confession, on the morning of March 23, 2007, was a coerced confession that was made involuntarily as a result of wrongful interrogation.<sup>162</sup> The totality of the circumstances has shown that the defendant's eight hour break in *Guilford* was insufficient to remove the influence of his wrongful interrogation from his mind.<sup>163</sup> The court's rejection of the defendant's confession comports with the spirit of the Fifth Amendment and the self-incrimination clause. In coming to its decision, the court did not articulate a clear rule regarding when a defendant is restored to his former state of mind. In the future, the court could determine the admissibility of a confession based not on a voluntariness standard but rather on an objective penalty standard.<sup>164</sup> With that in mind, each defendant's case and circumstances are different. An in-

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<sup>158</sup> *Id.*

<sup>159</sup> *Id.* at 330.

<sup>160</sup> 391 N.Y.S.2d 258 (App. Div. 4th Dep't 1977).

<sup>161</sup> *Id.* at 258.

<sup>162</sup> *Guilford*, 991 N.E.2d at 210.

<sup>163</sup> *Id.*

<sup>164</sup> Godsey, *supra* note 102, at 515-16.

flexible rule would most likely prejudice those defendants who need more time to readjust themselves from the effects of the interrogation. There is much at stake in confusing voluntary and involuntary admissions and great care must be taken in differentiating them. By accepting involuntary admissions, coerced by force or trickery, the court not only jeopardizes the liberty of the defendant but compromises the integrity of the justice system as a whole. For that reason, the standard for defining voluntariness with regard to confessions is necessarily high, and justice is better served through the current trend of assessing issues of voluntariness on a case-to-case basis.

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