

SUPREME COURT OF LOUISIANA

No. 05-KK-1054

STATE OF LOUISIANA

VERSUS

C. HUNTER KING

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL
FOURTH CIRCUIT, PARISH OF ORLEANS

CALOGERO, Chief Justice, would grant and remand and assigns reasons.

The issue presented by this writ application is whether the district court erred in denying the defendant’s motion to suppress a stipulation of facts and law to which the defendant agreed in a disciplinary proceeding that preceded the instant prosecution. The resolution of this issue depends upon analysis of two subissues: (1) whether the stipulation constituted a “confession”; and (2) if so, whether that confession was subject to suppression under *Garrity v. State*, 385 U.S. 493 (1967).

The defendant in this case is facing prosecution for public salary extortion and perjury. In the course of an earlier disciplinary proceeding, the defendant agreed to a stipulation, which was eventually adopted by this court in its opinion removing the defendant from the bench for misconduct. *In re King*, 2003-1412 (La. 10/21/03), 857 So. 2d 432. This court’s *King* opinion described the stipulation at issue as follows:

In the stipulated facts, Judge King admitted to making the statements attributed to him in the transcripts of the staff meetings provided by Ms. Wallace, admitted making the statements attributed to him in the transcript of his sworn statement, and admitted that those statements which he made in his sworn statement which are quoted in the Stipulation were false. **Judge King also admitted in the stipulated facts that he made statements in his response to Ms. Wallace’s complaint and during his April 2, 2002, sworn statement which he knew or should have known were false or misleading and which were**

pertinent and material to the issues under investigation by the Commission. Based on these stipulated facts, Judge King and the OSC agreed in the Stipulation that he violated the Code of Judicial Conduct as charged in the formal charges, engaged in willful misconduct relating to his official duty, and **engaged in persistent and public conduct prejudicial to the administration of justice** that brought the judicial office into disrepute

Id. at 441 (emphasis added). The defendant claims that this stipulation constituted a “confession” under La. Rev. Stat. 15:449,¹ and that it should have been suppressed, under La. Rev. Stat. 15:451,² because it was the result of duress and intimidation. Alternatively, the defendant argues that, under La. C. Cr. P. art. 703(E)(1),³ the district court should have at least held an evidentiary hearing on the motion before ruling.

The district court denied the motion, without holding an evidentiary hearing, finding that the stipulation constituted an “admission,” and not a “confession.” The district court reasoned that the protections afforded to a “confession” did not apply “[w]here a person only admits certain facts from which the jury may or may not infer guilt.” *State v. Picton*, 25 So. 2d 375, 377 (La. 1899). I disagree with the district court’s conclusion, and believe that the defendant has made a showing sufficient to justify an evidentiary hearing on the issue of whether the stipulation constituted a “confession” under La. Rev. Stat. 15:449. The stipulation did not merely acknowledge facts which might establish guilt. Rather, the defendant’s stipulation also contained legal conclusions and acknowledged intent to mislead or conceal

¹La. Rev. Stat. 15:449 distinguishes between “admissions” and “confessions,” providing that “[t]he term ‘admission’ is applied to those matters of fact which do not involve criminal intent; the term ‘confession’ is applied only to an admission of guilt, not to an acknowledgment of facts merely tending to establish guilt.”

²La. Rev. Stat. 15:451 states, “Before what purposes to be a confession can be introduced in evidence, it must be affirmatively shown that it was free and voluntary, and not made under the influence of fear, duress, intimidation, menaces, threats, inducements or promises.”

³La. C. Cr. P. art. 703(E)(1) states, “An evidentiary hearing on a motion to suppress shall be held only when the defendant alleges facts that would require the granting of relief. . . .”

material information. The defendant conceded that (1) he gave **sworn** statements that “he knew or should have known were false or misleading and which were pertinent and material to the issues under investigation by the Commission,” (2) his conduct violated the judicial canons, and (3) his conduct prejudiced the administration of justice. Although the stipulation did not expressly refer to the defendant’s conduct as “perjury,” the stipulation essentially admits that the defendant intentionally gave false testimony under oath and impeded an official investigation. Thus, I believe that the district court erred in reaching the conclusion that the stipulation was not a “confession” under La. Rev. Stat. 15:449 without even holding an evidentiary hearing.

Under *Garrity*, the Fourteenth Amendment’s protection against coerced statements requires suppression of a confession where the defendant is presented with a choice either to forfeit his job or to incriminate himself. 385 U.S. at 497. In *Garrity*, two police officers were questioned in connection with a criminal investigation of alleged fixing of traffic tickets. *Id.* at 494. The defendants were warned that, pursuant to a New Jersey statute, they would be subject to removal from office if they refused to answer questions in connection with the investigation. *Id.* The defendants participated in the investigation, and their statements were used in subsequent prosecutions for conspiracy to obstruct the administration of traffic laws. *Id.* at 495. The Court held that the trial court erred by not suppressing the statements, reasoning that “[t]he option to lose their means of livelihood or to pay the penalty of self-incrimination is the antithesis of free choice to speak out or to remain silent.” *Id.* at 497. The coercion inherent in presenting a defendant with this choice was so severe as to strip the defendant of the ability to make a free and rational decision, rendering the statement involuntary. *Id.* at 497-98.

In this case, the defendant argues that the Judiciary Commission's Rule VII D presented him with a Hobson's choice comparable to that with which the officers in *Garrity* were faced. This rule generally provides that a judge's refusal to cooperate in an investigation may be considered in determining the appropriate sanction:

[t]he failure or refusal of a judge to cooperate in an investigation, or the use of dilatory practices, frivolous or unfounded responses or arguments, or other uncooperative behavior may be considered by the Commission in determining whether or not to recommend a sanction to the Louisiana Supreme Court, and may bear on the severity of the sanction actually recommended.

The district court rejected this argument, without an evidentiary hearing, finding that the defendant "actively participated in, authorized and approved the stipulation" in the course of the disciplinary investigation, and that "there was no need to acquiesce to any confession of any criminal activity." The investigation only required the defendant to "admit the facts, tell his side of the story, and dispute the facts" reported by the individual who had filed a complaint against him.

Although Rule VII D does not expressly mention removal from office as a possible penalty of refusal to participate in an investigation, and thus *Garrity* might be somewhat distinguishable, the defendant was well aware that the Judiciary Commission was authorized to recommend this penalty. It does not strain logic to infer that the defendant felt compelled to agree to an incriminating stipulation precisely to avoid or try to avoid removal from the bench. And, this is the type of choice that *Garrity* held results in an involuntary confession.

It is for these reasons that I would have granted this writ application and remanded the case to the district court to hold an evidentiary hearing under La. C. Cr. P. art. 703(E)(1) on the motion to suppress. At such hearing, the district court could have inquired further into the facts and circumstances surrounding the defendant's agreement to the stipulation at issue, to determine whether the stipulation was a

“confession” under La. Rev. Stat. 15:449, and, if so, whether the stipulation was involuntary, and therefore subject to suppression, because of the threat of removal from office.