

SUPREME COURT OF LOUISIANA

No. 97-KK-2456

STATE OF LOUISIANA

Versus

SARAH H. EDMONDSON

LEMMON, J., Dissenting

I disagree that defendant's statement was not compelled.¹ Under the transactional immunity agreement, the Mississippi district attorney had the right to cancel the promised immunity if defendant did not "cooperate fully." The Mississippi authorities questioned defendant under the agreement, first asking her about the Mississippi crime, and she answered fully, being compelled to do so (despite her earlier assertion in the agreement of her privilege against self-incrimination) in order to maintain the immunity promised under the agreement. When the Mississippi authorities further questioned her about the Louisiana crime (which was potential penalty phase evidence for the capital trial in Mississippi), defendant continued to be compelled to answer those questions or risk the loss of the immunity.

The majority's characterizing the answers to the questions about the Louisiana crimes (for which information had been furnished by the Louisiana authorities) as "voluntary," while apparently accepting the answers concerning the interrelated Mississippi crime as "compelled," is an illusory distinction that escapes me.

Neither do I perceive any significant basis for a distinction in the enforcement

¹A person may not be compelled to give incriminating testimony in one jurisdiction unless the compelled testimony and its fruits cannot be used against the person in a criminal prosecution in another jurisdiction. Murphy v. Waterfront Comm'n of N.Y. Harbor, 378 U.S. 52 (1964).

of use plus derivative-use immunity between immunity granted by a statute and that which flows from an informal agreement. A grant of immunity displaces the right of the person to refuse to testify. 1 Wayne R. LaFave & Jerold H. Israel, Criminal Procedure §8.11(a) (1984). Whether the immunity is conferred by statute or by agreement,² the person's loss of the right to refuse to testify compels the person to testify. The fact that the person sometimes initiates negotiation of the informal agreement does not necessarily make testimony under the agreement voluntary rather than compelled.³

Moreover, the grant of immunity is intended to place the person in the same position as if he or she had not testified, Murphy, supra, and the grant of immunity must be coextensive with the scope of the privilege against self-incrimination, Kastigar v. United States, 406 U.S. 441 (1972).⁴ A person who loses the privilege against self-incrimination, whether by statute or by agreement, must be assured that the immunity coextensive with the scope of the privilege precludes any use of the statements and the fruits derived from the statements.

²An immunity agreement is not a typical bilateral contract between two parties with equal arguing power.

³Several courts have held that testimony given under an informal grant of immunity may be excluded on the basis of the traditional standards applied to confessions induced by promises. LaFave, supra, at §8.11(d).

⁴Kastigar was a pro-government decision which held that use plus derivative-use immunity, and not transactional immunity (as argued by the defendant), was required as a result of the loss of the privilege.