

SUPREME COURT OF LOUISIANA

No. 97-KK-2456

STATE OF LOUISIANA

VERSUS

SARAH HAVELY EDMONDSON

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ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,

FIRST CIRCUIT, PARISH OF TANGIPAHOA

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Calogero, C.J. dissenting

For the following reasons, I respectfully dissent.

Sarah Edmondson, through her attorney, negotiated an immunity agreement with the Mississippi prosecutorial officials in which she was provided the following in exchange for her cooperation with the investigation and her testimony:

This agreement prohibits any prosecution related to the transaction, irrespective of whether there is an independent source for the evidence....*It is understood that the testimony given under this agreement will be non-voluntary and compelled. The witness, Sarah Havelly Edmondson, will continue to assert his/her Fifth Amendment Rights and State Constitutional rights against compulsory self-incrimination.* (emphasis added).

It is undisputed that Sarah Edmondson was not granted formal statutory immunity. However, “[A] witness does not need any statute to protect him from the use of self-incriminating testimony he is compelled to give over his objection. The Fifth Amendment takes care of that without a statute.” *Adams v. Maryland*, 347 U.S. 179 (1954). Edmondson, in effect, contracted with the Mississippi officials that she would be provided the same protections as if she had in fact been granted formal statutory immunity for her statement in addition to transactional immunity for her person. Under the specific terms of her agreement, which were accepted by the Mississippi officials, Edmondson was led to believe that she would also be granted use plus derivative use immunity for her statements, made over continuing assertion of her Fifth Amendment privilege, which would be binding on other jurisdictions. *Kastigar v. United States*, 406 U.S. 441 (1972); *Murphy v. Waterfront Commission of New York Harbor*, 378 U.S. 52 (1964). Additionally, as a

predicate for her immunity, Edmondson was to provide to the Mississippi authorities, “certain information, specifically, *but not limited to*” the murder of William Savage. (emphasis added).

The agreement further provided, as was requested by the Mississippi officials:

It is expressly understood and agreed that if Sarah Havelly Edmondson does not cooperate fully with the District Attorney, Robert H. Williams, then said District Attorney in his sole discretion has the absolute authority to cancel this agreement and declare it void and take any action against said Sarah Havelly Edmondson that the District Attorney in his sole discretion chooses to take.

This provision compelled Edmondson to answer questions pertaining to the Louisiana crimes, which no doubt followed her incriminating answers to questions pertaining to the Mississippi murder. A refusal to answer questions directed towards the Louisiana crimes would have been seen as a failure to cooperate and would have violated the terms of the immunity agreement. Therefore, had she invoked her Fifth Amendment privilege when asked about the Louisiana crimes, she risked repudiation of the immunity guarantee *after she had already implicated herself in the Mississippi murder*. Significantly, because the same murder weapon was used in crimes occurring over a two-day period and William Savage’s wallet was disposed of in the Ponchatoula area, the crimes were so interconnected that Edmondson could not help but implicate herself in the Ponchatoula crime if she was indeed to provide full cooperation with the Mississippi officials as the immunity agreement required. Both the terms of the agreement and the close connexity of the two crimes rendered questions pertaining to the Louisiana crimes within the scope of the immunity agreement and its provision which required her full cooperation regarding the Savage murder and its related events. Therefore, Edmondson’s truthful response to questions pertaining to the Louisiana crimes was an express precondition of the agreement. *But cf. Hutto v. Ross*, 429 U.S. 28 (1976) (holding that a plea-bargain that was not contingent upon defendant’s confession rendered defendant’s subsequent inculpatory statement to the police officials voluntary).

In these respects, the instant case is analogous to this Court’s previous decision in *State v. Lewis*, 539 So.2d 1199 (La. 1989), which held the defendant’s statement to be compelled by the grant of immunity. In *Lewis*, the defendant gave an inculpatory statement under an immunity agreement entered into with Rapides Parish officials. Avoyelles Parish sought to use the statement against Lewis for crimes allegedly committed in Avoyelles Parish. Pursuant to the immunity agreement, Lewis was required to confess, “any and all related criminal offenses taking

place within the jurisdiction of the United State of America and/or under the jurisdiction of the state of Louisiana....” In exchange for this testimony, the state promised that, “Anything, whatsoever, that JIMMIE LEWIS communicates and/or conveys to law enforcement officers, in connection with this plea agreement, will not be used against him, nor any derivative evidence obtained as a result of his cooperation will be used against him.” *Lewis*, 339 So.2d at 1205.

In *Lewis* this Court stated, “While defendant might have expected he could be subject to subsequent prosecution in another jurisdiction, this promise assured him that any evidence he gave would not be used against him. It is contrary to reason to believe he would have given evidence against himself had he believed such evidence could later be used against him. Instead, he gave evidence in exchange for the state’s promise of immunity and, thus, the statements were not voluntary.” *Lewis*, 539 So.2d at 1205. Applying the totality of the circumstances test, this Court concluded that the statement was compelled, and that, therefore, under *Kastigar*, the statement must be afforded use plus derivative use immunity even in the non-immunizing jurisdiction of Avoyelles Parish. *Id.* at 1205-06.

Similarly, Edmondson’s statements “arose out of and were demanded by the agreement [she] made in an arm’s-length negotiation with the [S]tate [of Mississippi].” *Id.* at 1205. The Louisiana crimes were so interconnected with those of Mississippi that her full cooperation with the Mississippi investigation would have been impossible had she refused to respond to that line of questioning. Moreover, the agreement stipulated that her statement was compelled, and that she would continue to assert her Fifth Amendment privilege against self-incrimination.<sup>1</sup> Edmondson had never spoken with police authorities prior to that time, had invoked her right to counsel, and had attorneys in three states. These factors are further evidence that she had no intention of waiving her Fifth Amendment privilege. Also significant is the fact that Louisiana law enforcement officials participated in, and were aware of, the Mississippi activities surrounding the taking of Edmondson’s statement. *See U.S. v. Long*, 852 F.2d 975, 976 (7<sup>th</sup> Cir. 1988) (finding that the absence of federal prosecutorial knowledge of and participation in the state prosecution of the defendant further supported the characterization of defendant’s inculpatory statement as

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<sup>1</sup> The majority notes that other jurisdictions have held certain informal immunity agreements to be voluntary and, therefore, not binding on subsequent prosecutions. *See Camp*, 72 F.3d at 761; *Eliason*, 3 F.3d at 1153. This case is distinguishable, however, in that Edmondson continued to invoke her Fifth Amendment privilege, a fact that was absent in *Camp* and *Eliason*, *supra*.

being voluntary). Louisiana law enforcement officials provided the Mississippi officials with key facts relating to the Louisiana crimes in order to facilitate the Mississippi investigation, and they in turn were briefed about Edmondson's possible involvement in the Savage murder as well as her cooperation agreement with the Mississippi authorities.

Under the facts and circumstances specific to this case, Edmondson's statement to Mississippi officials cannot be construed as voluntary. As a compelled statement, it is entitled to the protections co-extensive with the Fifth Amendment privilege against compulsory self-incrimination, and, therefore, it is afforded use plus derivative use immunity. Under my reading of *Murphy, supra*, these protections are binding on Louisiana by virtue of the Fifth Amendment. Therefore, Louisiana should be prohibited from using that statement, or any fruits derived therefrom, as either direct evidence of Edmondson's guilt or as other crimes evidence under La. Code of Evidence article 404B(1).