# ADMISSIBILITY OF CONFESSIONS UNDER OCGA § 24-3-50, THE "HOPE OF BENEFIT, FEAR OF INJURY" STATUTE

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## Introduction

Georgia criminal defense attorneys know that in a state criminal trial a confession may be inadmissible on federal constitutional grounds if it was coerced in violation of the 14th Amendment due process clause,[1] elicited in contravention of the right to counsel under the 6th Amendment,[2] seized in violation of 4th Amendment protections,[3] or compelled in violation of the 5th Amendment self-incrimination privilege as construed in Miranda v. Arizona[4] and its progeny.[5] However, some criminal defense lawyers in this state may not realize that, regardless of whether it is admissible under the Federal Constitution, a confession may be inadmissible in a Georgia court under OCGA § 24-3-50, the "hope of benefit, fear of injury" statute, which provides: "To make a confession admissible, it must have been made voluntarily, without being induced by another by the slightest hope of benefit or remotest fear of injury."

Since around 1940 nearly all the cases construing this statute have involved the claim that a confession was induced by hope of benefit; claims that a confession was induced by fear of injury are infrequent nowadays.

OCGA § 24-3-50 was originally enacted as part of the Georgia Code of 1863 and has been on the books ever since.[6] OCGA § 24-3-50 codifies the common law rule that confessions, to be admissible, must be voluntary.[7] A confession cannot be excluded under OCGA § 24-3-50

unless the defendant makes a timely and proper objection to it in the trial court.[8] When the defendant does file such an objection, he is entitled to a *Jackson v. Denno*[9] hearing on the confession's admissibility if the confession was obtained by a state agent.[10] Once the defendant has correctly lodged his objection based on OCGA § 24-3-50, the state has the burden of proving by a preponderance of the evidence that the confession was voluntary;[11]and the trial court must, prior to admitting the confession, make a legal determination that it was voluntary.[12]

A confession which is involuntary under OCGA § 24-3-50 may not be used as a prior inconsistent statement to impeach the credibility of a defendant who takes the stand and testifies.[13]

Admitting a confession that is involuntary under OCGA § 24-3-50 may constitute harmless error.[14]

Traditionally in criminal cases a confession has been distinguished from an admission.[15] Historically, an admission has been defined as an incriminating statement by the defendant, and a confession as an admission in which the defendant expressly or directly acknowledges the fact of his guilt.[16] Under this approach, confessions are "thus only one species of admissions ...."[17] The common law rule forbidding use of involuntary confessions permitted use of an involuntary admission not amounting to a confession.[18] OCGA § 24-3-50, which embodies the common law rule, specifically uses the term "confession." Does OCGA § 24-3-50, like the common law rule, apply only to confessions, or does it extend to admissions as well? Georgia caselaw is divided on this question.[19] At any rate, the question is less important than it used to be because of Georgia decisions since 1974 which have redefined confessions to include many incriminating statements which previously were deemed to be only admissions.[20]

## Confessions Inadmissible Under OCGA § 24-3-50

Under OCGA § 24-3-50, a confession is inadmissible if it was induced "by the remotest fear of injury." There appear to be only seven reported cases where a conviction was reversed under the "fear of injury" language in OCGA § 24-3-50. Five of these cases were in the Georgia Supreme Court, with the most recent being handed down in 1929;[21] the two others were decided in the Georgia Court of Appeals in 1907 and 1909 respectively.[22] Under this caselaw a defendant's confession is involuntary if (1) it resulted from physical brutality inflicted on the defendant to make him confess,[23] (2) the defendant had been beaten or whipped and the confession resulted from fear that, if he did not confess, he would again be physically injured,[24] or (3) the defendant, although he had not yet been physically injured, confessed as a consequence of being threatened (whether by words or deeds) with physical brutality.[25]

Even if it was not induced by fear of injury, under OCGA § 24-3-50 a defendant's confession is inadmissible if it results from "the slightest hope of benefit." There appear to be only thirteen decisions of the Georgia Supreme Court where a conviction was reversed or on interlocutory appeal a confession was suppressed under the "hope of benefit" provision.[26] Five of these decisions date from 1976 or later, with the most recent in 2000. There are only four decisions of the Georgia Court of Appeals reversing a conviction based on this provision of OCGA § 24-3-50, all decided between 1940 and 1980.[27] Under this caselaw a confession is involuntary if the defendant confessed because he was (1) advised or urged to confess,[28] (2) told or led to believe that he would receive a lighter or more lenient sentence or punishment if he confessed,[29] or (3) told the case would be settled or compromised if he confessed.[30]

## Confessions Admissible Under OCGA § 24-3-50

Whereas there are less than thirty appellate cases in which a confession was held inadmissible under OCGA § 24-3-50, there are around a hundred appellate cases where a confession was found to be admissible under OCGA § 24-3-50.[31]

OCGA § 24-3-50 requires that the hope of benefit or fear of injury be "induced by another;" a confession induced by hope or fear is not involuntary under the statute if the hope or fear was self-induced by the defendant.[32] "A hope or fear which originates in the mind of the person making the confession and which originates from seeds of his own planting would not exclude a confession."[33] (Where, however, the improper hope of benefit or fear of injury was not self-induced by the defendant, the fact that the confession was given to someone other than the person inducing the hope or fear will not render the confession voluntary under OCGA § 24-3-50.[34])

A confession induced by artifice or deceit is admissible under OCGA § 24-3-50 unless the deception either "is calculated to procure an untrue statement,"[35] or, under the circumstances, "constitut[es] a 'slightest hope of benefit or remotest fear of injury' under OCGA § 24-3-50 ...."[36]

Under OCGA § 24-3-50, "encouraging a suspect to tell the truth does not amount to the hope of benefit,"[37] and therefore "admonitions to tell the truth will not invalidate a confession."[38]

Additionally, a confession will not be excludable under OCGA § 24-3-50 if it is admissible under a companion statute, OCGA § 24-3-51, which provides: "The fact that a confession has been made under a spiritual exhortation, a promise of secrecy, or a promise of collateral benefit shall not exclude it."[39] Under OCGA § 24-3-51, confessions induced by promises of "a collateral benefit" are admissible notwithstanding the provisions of OCGA § 24-3-50.[40] There are numerous cases where a confession was held to be voluntary under OCGA § 24-3-50 because the confession had been induced by a promise which the court deemed to involve merely "a collateral benefit."[41]

For the past quarter century, the Georgia courts have taken the position that, with respect to OCGA § 24-3-50, "[g]enerally, the reward of a lighter sentence for confessing is the 'hope of benefit' to which the statute refers."[42] Furthermore, the promise of lesser punishment "must relate to the charge or sentence facing the suspect."[43] Thus, practically any promise of reward made to a defendant which induces him to confess, except a promise of leniency on the present charges, is deemed not to violate OCGA § 24-3-50.[44]

## Conclusion

OCGA § 24-3-50, the "hope of benefit, fear of injury" statute, authorizes suppression of confessions which may or may not be suppressible under the Federal Constitution. Couched in "pungent language,"[45] the statute, insofar as involuntary confessions are concerned, "adopts the strongest and most extreme rule."[46] Despite this, the statute has been sharply narrowed by judicial interpretation. Nonetheless, every lawyer who handles a criminal case in this state should remember that under the statute a confession of guilt may be excludable even though the confession was obtained in compliance with federal constitutional requirements.

## Footnotes

1. See, e.g., Arizona v. Fulminante, 499 U.S. 279 (1991); Miller v. Fenton, 474 U.S. 105 (1985); Mincey v. Arizona, 437 U.S. 385 (1978); Davis v. North Carolina, 384 U.S. 737 (1966).
2. See, e.g., Texas v. Cobb, 532 U.S. 162 (2001); McNeil v. Wisconsin, 501 U.S. 171 (1991); Patterson v. Illinois, 487 U.S. 285 (1988); Kuhlmann v. Wilson, 477 U.S. 436 (1986); Michigan v. Jackson, 475 U.S. 625 (1986); Maine v. Moulton, 474 U.S. 159 (1985); Brewer v. Williams, 430 U.S. 387 (1977).
3. See, e.g., New York v. Harris, 495 U.S. 14 (1990); Taylor v. Alabama, 457 U.S. 687 (1982); Dunaway v. New York, 442 U.S. 200 (1979); Brown v. Illinois, 422 U.S. 590 (1975).
4. Miranda v. Arizona, 384 U.S. 436 (1966).

5. See, e.g., Withrow v. Williams, 507 U.S. 680 (1993); Minnick v. Mississippi, 498 U.S. 146 (1990); Arizona v. Roberson, 486 U.S. 675 (1988); Edwards v. Arizona, 451 U.S. 477 (1981).
6. Ga. Code § 3716 (1863); Ga. Code § 3740 (1868); Ga. Code § 3793 (1873); Ga. Code § 3793 (1882); Ga. Penal Code § 1006 (1895); Ga. Penal Code § 1032 (1910); Ga. Code § 38-411 (1933); OCGA § 24-3-50 (1982).
7. Griffin v. State, 230 Ga. App. 318, 496 S. E. 2d 480 (1998).

The common law rule prohibited admission of confessions induced by threats, promises, hope, or fear. For discussion of the common law rule, which originated in the second half of the 18th century, see 3 J. WIGMORE, EVIDENCE IN TRIALS AT COMMON LAW §§ 819 through 820 (J. Chadbourn ed. 1970).

R. v. Waricksall, 168 Eng. Rep. 234 (K. B. 1783), the earliest reported case in which the common law rule "received a full and clear expression," Griffin v. State, 230 Ga. App. 318, 321, 496 S. E. 2d 480 (1998), contains language similar to part of the text of OGGA § 24-3-50. However, whereas the common law doctrine required that the inducement to confess come from a "person in authority," i.e., someone with "a legal interest or authority in the arrest and prosecution," see 3 J. WIGMORE, EVIDENCE IN TRIALS AT COMMON LAW §§ 827, 829 (J. Chadbourn ed. 1970), the text of OCGA § 24-3-50 contains no "person in authority" requirement. Moreover, the Georgia courts have held that OCGA § 24-3-50 applies not only to confessions extracted by state agents, but also to confessions obtained by private persons. Cook v. State, 270 Ga. 820, 514 S. E. 2d 657 (1999); Turner v. State, 246 Ga. App. 49, 539 S. E. 2d 553 (2000); Wiley v. State, 245 Ga. App. 580, 538 S. E. 2d 483 (2000); Griffin v. State, 230 Ga. App. 318, 496 S. E. 2d 480 (1998).
8. Alford v. State, 137 Ga. 458, 73 S. E. 375 (1911); Eberhart v. State, 47 Ga. 598 (1873).
9. 378 U.S. 368 (1964).
10. Turner v. State, 246 Ga. App. 49, 539 S. E. 2d 553 (2000); Griffin v. State, 230 Ga. App. 318, 496 S. E. 2d 480 (1998).

11. Taylor v. State, 274 Ga. 269, 553 S. E. 2d 598 (2001); State v. Roberts, 273 Ga. 514, 543 S. E. 2d 598 (2001); Griffin v. State, 230 Ga. App. 318, 496 S. E. 2d 480 (1998); Peinado v. State, 223 Ga. App. 271, 477 S. E. 2d 408 (1996).
12. Griffin v. State, 230 Ga. App. 318, 496 S. E. 2d 480 (1998).
13. State v. Ritter, 268 Ga. 108, 485 S. E. 2d 492 (1997); Green v. State, 154 Ga. App. 295, 267 S. E. 2d 898 (1980).
14. Foster v. State, 258 Ga. 736, 374 S. E. 2d 188 (1988); Robinson v. State, 229 Ga. 14, 189 S. E. 2d 53 (1972); Askea v. State, 153 Ga. App. 849, 267 S. E. 2d 279 (1970).
15. There are numerous Georgia cases distinguishing confessions from admissions in criminal procedure. See, e.g., Gaines v. State, 239 Ga. 98, 236 S. E. 2d 55 (1977); Robinson v. State, 232 Ga. 123, 205 S. E. 2d 210 (1974); Johnson v. State, 204 Ga. 528, 50 S. E. 2d 334 (1948); Pressley v. State, 201 Ga. 267, 39 S. E. 2d 478 (1946); Allen v. State, 187 Ga. 178, 200 S. E. 109 (1938); Thomas v. State, 143 Ga. 268, 84 S. E. 587 (1915); Owens v. State, 120 Ga. 296, 48 S. E. 21 (1904); Norrell v. State, 116 Ga. App. 479, 157 S. E. 2d 784 (1967); Carter v. State, 90 Ga. App. 61, 81 S. E. 2d 868 (1954); Brown v. State, 83 Ga. App. 650, 64 S. E. 2d 313 (1951); Hawkins v. State, 8 Ga. App. 705, 70 S. E. 53 (1910); Riley v. State, 1 Ga. App. 651, 57 S. E. 1031 (1907).
16. Opper v. United States, 348 U.S. 84, 91 n. 7 (1954).
17. 3 J. WIGMORE, EVIDENCE IN TRIALS AT COMMON LAW § 821 (J. Chadbourn ed. 1970).
18. *Id*.
19. For caselaw holding that OCGA § 24-3-50 applies to confessions but not admissions, see, e.g., Carruthers v. State, 272 Ga. 306, 528 S. E. 2d 217 (2000); Allen v. State, 187 Ga. 178, 200 S. E. 109 (1938). For caselaw to the opposite effect, see, e.g., Turner v. State, 203 Ga. 770, 48 S. E. 2d 522 (1948); Mill v. State, 3 Ga. App. 414, 60 S. E. 4 (1908).
20. See W. Daniel, Georgia Criminal Trial Practice §§ 5-1, 5-2 (2000).
21. Thomas v. State, 169 Ga. 182, 149 S. E. 871 (1929); Lee v. State, 168 Ga. 554, 148 S. E. 400 (1929); King v. State, 155 Ga. 707, 118 S. E. 363 (1923); Burns v. State, 61 Ga. 192 (1878); Irwin v. State, 54 Ga. 39

(1875). See also Adams v. State, 129 Ga. 248, 58 S. E. 822 (1907); Johnson v. State, 76 Ga. 76 (1885); Earp v. State, 55 Ga. 137 (1875).
22. Hawkins v. State, 6 Ga. App. 109, 64 S. E. 289 (1909); Johnson v. State, 1 Ga. App. 129, 57 S. E. 934 (1907). See also Morris v. State, 33 Ga. App. 53, 125 S. E. 508 (1924); Moon v. State, 12 Ga. App. 614, 77 S. E. 1088 (1913); Mill v. State, 3 Ga. App. 414, 60 S. E. 14 (1908).
23. See, e.g., Burns v. State, 61 Ga. 192 (1878). See also State v. Roberts, 273 Ga. 514, 543 S. E. 2d 725 (2001) (any confession obtained through physical or mental torture is inadmissible under OCGA § 24-3-50).
24. See, e.g., Lee v. State, 168 Ga. 554, 148 S. E. 400 (1929); Burns v. State, 61 Ga. 192 (1878); Hawkins v. State, 6 Ga. App. 109, 64 S. E. 289 (1909).
25. See, e.g., Thomas v. State, 169 Ga. 182, 149 S. E. 871 (1929); Irwin v. State, 54 Ga. 39 (1875); Johnson v. State, 1 Ga. App. 129, 57 S. E. 934 (1907).
26. State v. Ray, 272 Ga. 450, 531 S. E. 2d 705 (2000); Corthan v. State, 268 Ga. 443, 491 S. E. 2d 66 (1997); State v. Ritter, 268 Ga. 108, 485 S. E. 2d 492 (1997); Williams v. State, 239 Ga. 327, 236 S. E. 2d 672 (1977); Johnson v. State, 238 Ga. 27, 230 S. E. 2d 849 (1976); Turner v. State, 203 Ga. 770, 48 S. E. 2d 522 (1948); McLemore v. State, 181 Ga. 462, 182 S. E. 618 (1935); Smith v. State, 125 Ga. 252, 54 S. E. 190 (1906); Griner v. State, 121 Ga. 614, 49 S. E. 700 (1905); Dixon v. State, 113 Ga. 1039, 39 S. E. 346 (1901); Green v. State, 88 Ga. 516, 15 S. E. 10 (1891); Byrd v. State, 68 Ga. 661 (1882); Frain v. State, 40 Ga. 529 (1869).
27. Green v. State, 154 Ga. App. 295, 267 S. E. 2d 898 (1980); Hickox v. State, 138 Ga. App. 882, 227 S. E. 2d 829 (1976); Biddy v. State, 127 Ga. App. 212, 193 S. E. 2d 31 (1972); Jordan v. State, 77 Ga. App. 656, 48 S. E. 2d 756 (1948); McKennon v. State, 63 Ga. App. 466, 11 S. E. 2d 416 (1940). See also Griffin v. State, 230 Ga. App. 318, 496 S. E. 2d 480 (1998).

Hickox v. State, 138 Ga. App. 882, 227 S. E. 2d 829 (1976), seems to have been overruled sub silentio by Tillman v. State, 251 Ga. App. 330, 554 S. E. 2d 305 (2001); Pounds v. State, 189 Ga. App. 809, 377 S.

E. 2d 722 (1989); and Heard v. State, 165 Ga. App. 252, 300 S. E. 2d 213 (1983).
28. See, e.g., McLemore v. State, 181 Ga. 462, 182 S. E. 618 (1935); Jordan v. State, 77 Ga. App. 656, 48 S. E. 2d 756 (1948); McKennon v. State, 63 Ga. App. 466, 11 S. E. 2d 416 (1940).
29. See, e.g., State v. Ray, 272 Ga. 450, 531 S. E. 2d 705 (2000); State v. Ritter, 268 Ga. 108, 485 S. E. 2d 492 (1997); Johnson v. State, 238 Ga. 27, 230 S. E. 2d 849 (1976); Turner v. State, 203 Ga. 770, 48 S. E. 2d 522 (1948).
30. See, e.g., Byrd v. State, 68 Ga. 661 (1882); Frain v. State, 40 Ga. 529 (1869).
31. For a sampling of recent cases finding a confession voluntary under OCGA § 24-3-50, see, e.g., Harris v. State, 274 Ga. 422, 554 S. E. 2d 458 (2001); Taylor v. State, 274 Ga. 269, 553 S. E. 2d 598 (2001); State v. Roberts, 273 Ga. 514, 543 S. E. 2d 725 (2001); Presley v. State, 251 Ga. App. 823, 555 S. E. 2d 156 (2001); Tillman v. State, 251 Ga. App. 330, 554 S. E. 2d 305 (2001); State v. Todd, 250 Ga. App. 265, 549 S. E. 2d 821 (2001); Bailey v. State, 248 Ga. App. 120, 545 S. E. 2d 659 (2001); Evans v. State, 248 Ga. App. 99, 545 S. E. 2d 641 (2001).
32. See, e.g., Williams v. State, 250 Ga. 553, 300 S. E. 2d 301 (1983); Hill v. State, 148 Ga. 521, 97 S. E. 442 (1918); Hecox v. State, 105 Ga. 625, 31 S. E. 592 (1898); Bohanan v. State, 92 Ga. 28, 18 S. E. 302 (1893); Pounds v. State, 189 Ga. App. 809, 377 S. E. 2d 722 (1989).
33. Foster v. State, 72 Ga. App. 237, 239-40, 33 S. E. 2d 598 (1945). Accord: Ramos v. State, 198 Ga. App. 65, 400 S. E. 2d 353 (1990); Hall v. State, 180 Ga. App. 366, 180 S. E. 2d 255 (1986); Dickey v. State, 157 Ga. App. 13, 276 S. E. 2d 75 (1981).
34. Thomas v. State, 169 Ga. 182, 149 S. E. 871 (1929); Griner v. State, 121 Ga. 614, 49 S. E. 700 (1905).
35. State v. Ritter, 268 Ga. 108, 110, 485 S. E. 2d 492 (1997). Accord: Harris v. State, 274 Ga. 422, 554 S. E. 2d 458 (2001); DeYoung v. State, 268 Ga. 780, 493 S. E. 2d 157 (1997); Hudson v. State, 153 Ga. 695, 113 S. E. 519 (1922); Williams v. State, 100 Ga. 511, 28 S. E. 624 (1897); McLeod v. State, 170 Ga. App. 415, 317 S. E. 2d 253 (1984); Tyson v. State, 165 Ga. App. 22, 299 S. E. 2d 69 (1983).

36. State v. Ritter, 268 Ga. 108, 110, 485 S. E. 2d 492 (1997).
37. Gilliam v. State, 268 Ga. 690, 692, 492 S. E. 2d 185 (1997). Accord: Lee v. State, 270 Ga. 798, 514 S. E. 2d 798 (1999); Duke v. State, 268 Ga. 425, 489 S. E. 2d 811 (1997); Henry v. State, 266 Ga. 732, 462 S. E. 2d 737 (1995).
38. State v. Roberts, 273 Ga. 514, 516, 543 S. E. 2d 725 (2001). Accord: Harris v. State, 274 Ga. 422, 554 S. E. 2d 458 (2001).
39. OCGA § 24-3-51, like OCGA § 24-3-50, dates back to the Georgia Code of 1863. Ga. Code § 3717 (1863); Ga. Code § 3741 (1868); Ga. Code § 3794 (1873); Ga. Code § 3794 (1882); Ga. Penal Code § 1007 (1895); Ga. Penal Code § 1033 (1910); Ga. Code § 38-412 (1933); OCGA § 24-3-51 (1982).

Another statute dating to 1863 formerly authorized admission of facts discovered in consequence of a confession inadmissible under the "hope of benefit, fear of injury" statute. Ga. Code § 38-413 (1933) provided: "Any material facts discovered by a confession by an accused may be proved, and the fact of its discovery by reason of such information, though the confession shall be rejected." Ga. Code § 38-413 was repealed in 1981. 1981 Ga. Laws 875.
40. See, e.g., White v. State, 266 Ga. 134, 465 S. E. 2d 277 (1998); Tyler v. State, 247 Ga. 119, 274 S. E. 2d 549 (1981); Burton v. State, 212 Ga. App. 100, 441 S. E. 2d 470 (1994); Johnson v. State, 170 Ga. App. 71, 316 S. E. 2d 160 (1984); Patrick v. State, 169 Ga. App. 302, 312 S. E. 2d 385 (1983), aff'd on other grounds, 252 Ga. 509, 314 S. E. 2d 909 (1984); Tyson v. State, 165 Ga. App. 22, 299 S. E. 2d 69 (1983).
41. *Id*.
42. Taylor v. State, 274 Ga. 269, 273, 553 S. E. 2d 598 (2001). See, e.g., State v. Ray, 272 Ga. 450, 531 S. E. 2d 705 (2000); State v. Ritter, 268 Ga. 108, 485 S. E. 2d 492 (1997); Tillman v. State, 251 Ga. App. 330, 554 S. E. 2d 305 (2001); State v. Todd, 250 Ga. App. 265, 549 S. E. 2d 821 (2001).

The trend in favor of usually equating "hope of benefit" with expectation of lesser punishment began in Presnell v. State, 241 Ga. 49, 243 S. E. 2d 496, vacated on other grounds, 439 U.S. 14 (1978).

43. White v. State, 266 Ga. 134, 135, 465 S. E. 2d 277 (1996). Accord: Evans v. State, 248 Ga. App. 99, 545 S. E. 2d 641 (2001); Sparks v. State, 232 Ga. App. 179, 501 S. E. 2d 562 (1998).
44. See, e.g., White v. State, 266 Ga. 134, 465 S. E. 2d 277 (1996) (promise to permit defendant to smoke); Arline v. State, 264 Ga. 843, 452 S. E. 2d 843 (1995) (telling defendant that his cooperation will be made known to the prosecution); Cansler v. State, 261 Ga. 693, 409 S. E. 2d 504 (1991) (telling defendant the truth could not hurt him); Tillman v. State, 251 Ga. App. 330, 554 S. E. 2d 305 (2001) (offer to assist defendant with a reduction of his bail bond); Evans v. State, 248 Ga. App. 99, 545 S. E. 2d 641 (2001) (telling defendant his cooperation will be made known to trial judge); Anderson v. State, 224 Ga. App. 608, 481 S. E. 2d 595 (1997) (detective told defendant he was considering charging defendant's girlfriend as accessory); Peinado v. State, 223 Ga. App. 271, 477 S. E. 2d 408 (1996) (promise to get defendant counseling help); Billings v. State, 212 Ga. App. 125, 441 S. E. 2d 262 (1994) (promise to facilitate a change in defendant's jail cell); Burton v. State, 212 Ga. App. 100, 441 S. E. 2d 470 (1994) (statement that substance abuse counseling was available); Clay v. State, 209 Ga. App. 266, 433 S. E. 2d 377 (1993) (offer to assist defendant in finding psychologist); Sizemore v. State, 201 Ga. App. 431, 411 S. E. 2d 505 (1991) (promise to let defendant see his children), rev'd on other grounds, 262 Ga. 214, 416 S. E. 2d 500 (1992); Sims v. State, 197 Ga. App. 214, 398 S. E. 2d 244 (1990) (offer to make defendant's confession known to district attorney and trial judge); Head v. State, 180 Ga. App. 901, 350 S. E. 2d 854 (1986) (agreeing to defendant's request to seek a psychiatric examination and making an unconditional promise to provide medical attention); Sampson v. State, 165 Ga. App. 833, 303 S. E. 2d 77 (1983) (telling defendant that his stepfather and girlfriend would remain in jail pending a determination of who possessed the contraband); Copeland v. State, 162 Ga. App. 398, 291 S. E. 2d 560 (1982) (telling defendant that his wife could be charged with a crime).
45. McLemore v. State, 181 Ga. 462, 466, 182 S. E. 618 (1935).
46. Johnson v. State, 1 Ga. App. 129, 132, 57 S. E. 934 (1907).

# CASELAW UPDATE

## Through April 1, 2008

Vergara v. State, 283 Ga. App. 175, 657 S.E.2d 863 (2008) (rejecting defendant's contention that his statements given to police were involuntary and excludable under OCGA § 24-3-50 because the only factor relied on was a promise that anything he said would not be made known in court; this is not sufficient because the mere "fact that a confession has been made under ... a promise of secrecy ... shall not exclude it" under OCGA § 24-3-51)

Rivera v. State, 282 Ga. 355, 647 S.E.2d 70 (2007) (finding no merit to defendant's contention that the investigators' accommodation of his request to speak to his wife was the slightest hope of benefit that would render defendant's statement involuntary and inadmissible under OCGA § 24-3-50)

Preston v. State, 282 Ga. 210, 647 S.E.2d 260 (2007) (where an interrogating officer gave no explicit promise of a lighter sentence but only discussed the death penalty and life without parole with the defendant stating that the district attorney based the charges brought on a recommendation from the police, did not amount to a promise of a lighter sentence or benefit of hope under OCGA § 24-3-50; instead the comments amounted to no more than an explanation of the seriousness of the situation and admonishment to help; admonitions to tell the truth will not invalidate a confession)

Hill v. State, 281 Ga. 795, 642 S.E.2d 64 (2007) (finding improper comments made by police that appellant would serve less jail time and be able to raise his young children if he confessed, but the statements were properly admitted without violation of OCGA § 24-3-50 because at the *Jackson v. Denno* hearing on the voluntariness of appellant's statement, appellant took the stand and responded in the negative to the

question “did [the police] ever promise you anything;” the State bears the burden of demonstrating by a preponderance of the evidence that a confession was voluntary, and did so in this case with appellant’s own testimony)

Stinski v. State, 281 Ga. 783, 642 S.E.2d 1 (2007) (statements by officers that defendant should help himself, that it was in his “best interest to tell” what he knew, and that the officers would “take [his] tape and show the district attorney and the judge” that he did not want to help himself, did not constitute a hope of benefit and were properly admitted; in applying OCGA § 24-3-50; it is not improper for the police to encourage a suspect to help herself by telling the truth; it also does not render a statement involuntary for the police to tell a suspect that the trial judge may consider her truthful cooperation with the police)

Redwine v. State, 280 Ga. 58, 623 S.E.2d 485 (2005) (defendant contends that the statements he gave police were not admissible because they were induced by hope of benefit under OCGA § 24-3-50; defendant contends that there was an agreement in place that provided that state would not seek the death penalty against him in exchange for his pleading guilty and testifying against Smallwood, and that the third statement was “part and parcel” of this agreement; lead defense counsel testified that the plea agreement was in exchange for defendant’s truthful testimony at trial, and was fully in place before this statement was made; counsel also testified that he wished defendant to make this third statement because he viewed it as protection if, after Smallwood’s trial, the state attempted to renege on the agreement and claim that defendant’s testimony was not truthful, the full, recorded, third statement would rebut that claim; such tactical decisions do not render a resulting statement inadmissible under OCGA § 24-3-50)

Brown v. State, 278 Ga. 724, 609 S.E.2d 312 (2004) (allegations that defendant would soon be free to go without any charges being filed were not supported by defendant’s testimony; in defendant’s testimony, he does not contend that detective mentioned a confession or sentence,

only that detective periodically stated that defendant would be soon released; nothing suggested that freedom would be forthcoming if defendant confessed; allowing defendant to overhear statements made by co-defendant implicating him in the shooting so that he would confess does not make a confession involuntary; the use of trickery by police does not render a confession inadmissible, so long as the means are not calculated to procure an untrue statement)

Pittman v. State, 277 Ga. 475, 592 S.E.2d 72 (2004) (routine police questioning aimed at eliciting a response from a defense in custody such as, "I don't think you knew that she had died. I think you tied her up thinking she was still alive and you placed her the tub" will not make a confession inadmissible; the suggestion by officer that defendant did not intend to kill the victim did not amount to a hope of benefit; informing a suspect that no drug charges will be brought against him if there is no evidence against him does not induce hope of benefit)

Robbins v. State, 290 Ga. App. 323, 659 S.E.2d 628 (2008) (finding defendant's confession to police was voluntarily given, even though defendant's wife was a law enforcement officer who promised the benefit of no divorce if defendant gave statement admitting to the crime; the wife's promise not to divorce, which did not bear on the question of punishment, was a promise of collateral benefit under OCGA §24-3-51 and not excludable under OCGA §24-3-50)

Valentine v. State, 289 Ga. App. 60, 656 S.E.2d 208 (2007) (finding no violation of OCGA § 24-3-50 in admitting defendant's statement where officers told defendant "it will look a whole lot better on you to tell us what happened and name the other person, than it will for you to sit back and not say anything and look like a monster;" such admonitions to tell the truth will not invalidate a confession; assuming these statements offer the hope of a lighter sentence, immediately following the statements by police, defendant asked, "How long will I get?," and the interrogating officer responded, "That's something you got to work out with the D.A.'s office, your attorney and all that kind of stuff;" therefore

any hope of benefit was dispelled by the officer's statement that he had no influence over defendant's possible punishment)

Rubia v. State, 287 Ga. App. 122, 650 S.E.2d 797 (2007) (the State bears the burden of showing the voluntariness of a statement by a preponderance of the evidence, and in determining whether the State has met its burden "the trial court must consider the totality of the circumstances;" an officer's statement that the police as a matter of policy placed children in the custody of DFACS upon the arrest of their parents was a mere recounting of fact rather than a threat of injury or promise of benefit within the meaning of OCGA § 24-3-50; hope of lighter punishment, induced by one other than the defendant, is usually the "hope of benefit" referred to in OCGA § 24-3-50)

Swain v. State, 285 Ga. App. 550, 647 S.E.2d 88 (2007) (rejecting a 15-year-old defendant's contention on appeal that the trial court erred in admitting his confession to a police officer; the court found no violation of OCGA § 24-3-50 because "[w]hile the detective used some profanities during the interview, called Swain a liar and a coward, and told Swain some lies regarding other evidence that they had against him, the detective did not threaten Swain, nor did the detective promise him anything in exchange for his confession;" the State bears the burden of demonstrating the voluntariness of a confession by a preponderance of the evidence)

Gonzalez v. State, 283 Ga. App. 843, 643 S.E.2d 8 (2007) (officer's request of court between two interviews that defendant's bond be lowered did not amount to the slightest hope of benefit or render defendant's statements involuntary; here, the hope of benefit was not a reduced sentence but a lowered bond, and a mere promise to reduce bond does not constitute a "hope of benefit" under OCGA § 24-3-50; instead, such promise, which does not implicate the sentence or charge at issue, is a collateral benefit under OCGA § 24-3-51, that does not make an otherwise admissible confession involuntary)

Smith v. State, 281 Ga. App. 91, 635 S.E.2d 385 (2006) (a trial court's determination after a *Jackson v. Denno* hearing that a statement was voluntarily made will not be disturbed on appeal unless it was clearly erroneous; a sheriff who received defendant's statement testified that he made no promises of leniency to him, but that when defendant told him about his drug addiction, he told defendant that he would inform the court that he needed help; this promise of help with a drug problem did not bear on the question of punishment, and was thus a collateral benefit; under OCGA § 24-3-51, "[t]he fact that a confession has been made under a spiritual exhortation, a promise of secrecy, or a promise of collateral benefit shall not exclude it;" defendant's testimony was admitted without violating OCGA § 24-3-50)

Wright v. State, 279 Ga. App. 155, 630 S.E.2d 656 (2006) (defendant argues that his confession was inadmissible under OCGA § 24-3-50 because he feared arrest if he requested an attorney from the interviewing officer; defendant argues that his question, "[i]f I ask for an attorney will I be arrested?" should have stopped the interview; law enforcement officers may continue questioning until and unless the suspect clearly request an attorney; if the suspect's statement is not an unambiguous or unequivocal request for counsel, the officers have no obligation to stop questioning; defendant never clearly requested the presence of an attorney and there is no evidence that his statement was given in fear of injury or for a hope of benefit; defendant also argued that his statement should have been excluded because the investigator lied to him throughout the interview; the use of trickery and deceit to obtain a confession does not render the confession inadmissible, so long as the means employed are not calculated to procure an untrue statement)

Rivera v. State, 279 Ga. App. 1, 630 S.E.2d 152 (2006) (defendant argues that his confession was inadmissible because it was involuntary and he believed he was being interrogated about his immigration status; the law enforcement officer testified that he told defendant and co-defendant Magna-Gonzalez that they were under arrest for being in the country illegally and that the officers wanted to talk to them about a

robbery; a law enforcement officer's failure to advise a suspect as to the crimes about which he is to be questioned prior to the suspect's waiver of his Miranda rights is not relevant to the question of whether the suspect's waiver was knowing and voluntary)

Davenport v. State, 277 Ga. App. 758, 627 S.E.2d 133 (2006) (defendant received a letter from victim's mother stating, "[i]f you confess right away, come clean, we will ask the Judge for some amount of mercy. You are the father of my sister's children and we want you to be reconciled with God and to your family;" defendant testified that he interpreted those portions of the letter to mean that if he made certain statements to the police, the victim's mother would have the charges against him dropped and he could get his family back; in a similar case, Wiley v. State, 245 Ga. App. 580, 538 S. E. 2d 483 (2000), defendant's statements were not induced by hope of benefit when parents of victim stated, "if you talk to us now, maybe we can work this out, if you tell us the truth now;" here, defendant's claim is contradicted by the text of the letter; had the victim's mother intended to drop the charges against Davenport if he confessed, there would be no need to seek mercy from the court)

State v. Parks, 273 Ga. App. 682, 616 S.E.2d 456 (2005) (use of trickery to obtain a confession does not render the confession inadmissible so long as the means employed are not calculated to procure an untrue statement; trickery may compromise the voluntariness of a statement if it constitutes "the slightest hope of benefit or remotest fear of injury;" unlike Richardson v. State, 265 Ga. App. 711, 596 S. E. 2d 565 (2004), where the court disapproved of the interviewing officer's suggestion to appellant that he would not be arrested and charged based on "how the interview went" because it induced false benefit of hope, the officer here stated to defendant that "he was free to go, period;" this statement did not compromise the voluntariness of the statements by defendant)

Awolusi v. State, 273 Ga. App. 332, 615 S.E.2d 177 (2005) (no indication exists in the statute, OCGA § 24-3-50, that it applies only to

confessions made to state actors or agents; the statute therefore applies to private actors as well as to government entities and officers; even when made to a witness who is not a state agent, as in this case, a confession must be voluntary to be admissible for any purpose under OCGA § 24-3-50; the Macy's interview did not violate Awolusi's rights and the statement she signed there was admissible and freely and voluntarily given)

State v. Johnson, 273 Ga. App. 324, 615 S.E.2d 163 (2005) (a mere promise to reduce bond does not constitute a "hope of benefit" under OCGA § 24-3-50; however, telling a defendant that she would be held in jail for one year without any opportunity for bond if she did not confess, and if she did confess she would be released the next day, does constitute an inducement to confess through a hope for a benefit)

Pauser v. State, 271 Ga. App. 259, 609 S.E.2d 193 (2005) (OCGA § 24-3-50 does not apply to defendant's custodial statement because he did not confess to the crimes for which he was being charged with; even if OCGA § 24-5-50 did apply, the promise of a reduction in bond is a collateral benefit that does not make an otherwise admissible confession an involuntary one)

Jones v. State, 270 Ga. App. 233, 606 S.E.2d 288 (2004) (defendant asserts that officer's statement that they did not want to get a warrant and their praise of his efforts at turning his life around led him to believe that he might not get charged because he was cooperating with them; defendant asked the detectives if they would promise that he would not go to prison in connection with the robberies; officer Guest responded, "I'm not allowed to make promises [sic]—all—all I can do is say look, this man is on the straight and narrow. He's straightened his life out. You know, I—I'm giving you a chance right now to tell me you side of it. That's all—you know—you know we know what we're talking about;" the officers made no promises to defendant that he would not go to jail; nor was there any representation that he might receive a lighter sentence; here, there was no violation of OCGA § 24-3-50)

Getake v. State, 269 Ga. App. 558, 604 S.E.2d 611 (2004) (defendant's contention that detectives mislead him to believe that any consensual sexual activity with J.S., a minor, would not constitute a crime was not supported by evidence and could not be construed as an offering of lighter punishment; inaccurate information about the sentence defendant was facing could not induce a slight benefit of hope because it was given after defendant confessed)

Cummings v. State, 266 Ga. App. 799, 598 S.E.2d 116 (2004) (for a confession to admissible, it must have been made voluntarily, without being induced by another by the slightest hope of benefit or the most remote fear of injury; giving a statement to the police in an effort to seek a deal does not create a hope of benefit induced by another and is therefore admissible; no promises were made to the defendant and defendant acknowledge this statement by an officer prior to giving his own statement, "We've told you we can't make deals, all we can do is tell the D.A. that you cooperated with us, and I believe that's what we've told your attorney. Is that all right?;" it is well established that a police officer is not offering a hope of benefit by telling a suspect that his cooperation and truthfulness will be made known to others)

Jones v. State, 266 Ga. App. 717, 598 S.E.2d 366 (2004) (a written promise to put in a good word for defendant does not constitute a hope of benefit; any benefit to be derived by the hope that the police officers would put in a good world for Clemons was purely collateral; there was no promise of a lighter punishment)

Richardson v. State, 265 Ga. App. 711, 595 S.E.2d 565 (2004) (the use of trickery and deceit to obtain a confession does not render it inadmissible so long as the means employed are not calculated to procure an untrue statement; this principle is not without exception; the employment of deceit may result in the inadmissibility of a statement in those situations where the particular deception used, by constituting a "slightest hope of benefit or remotest fear of injury," has induced a party

to confess, thereby rendering the confession involuntary; while the "hope of benefit" contained in OCGA § 24-3-50 has been interpreted generally as a reward of lighter punishment on the charges, we find that "hope of benefit" may also include, as in this case, the reward of no charges at all; here, however, the admission of the involuntary confession was harmless error)

Porter v. State, 264 Ga. App. 526, 591 S.E.2d 436 (2003) (it is not improper for an officer to make the statement, "you better decide right now whether you're going to tell the true and you're going to let us try to help you or whether you're just going to lie?" to induce a confession; a confession is inadmissible if induced by "slightest hope of benefit," which has been interpreted as a more lenient sentence; offers of help or possibly avoiding a jury by an officer will not render a confession inadmissible)

Jackson v. State, 262 Ga. App. 451, 585 S.E.2d 745 (2003) (defendant contends he was improperly induced into confession because the detectives promised to help him get a bond if he was cooperative and truthful about the robbery and the identities of his accomplices; this court has held that the promise of reduced bond is a "collateral benefit" that will not bar a confession under OCGA § 24-3-50; it is well established that a police officer does not offer a hope of benefit by telling a suspect that his cooperation and truthfulness will be made known to others)

Chandler v. State. 261 Ga. App. 639, 583 S.E.2d 494 (2003) (defendant argues the interrogating officer induced him to confess by offering some hope of benefit; after confessing, the interviewing officer asked: "What do you … think should happen to you?;" defendant replied that he need help and that he did not think he "could last through any jail time;" the officer asked defendant why he thought he should not go to jail, and he responded that he should not go because he was "scared;" defendant had already confessed to crimes prior to the portions of the interrogation he now challenges; even if the questions were improper, it had no bearing on the previous confession and did not affect its voluntary nature)

Pinckney v. State, 259 Ga. App. 309, 576 S.E.2d 574 (2003) (examination of the circumstances as a whole will determine whether a confession was given voluntarily; however, contending a confession was false because it was made to "please" the interviewing official will not invalidate the confession without its being induced by hope of benefit or remotest fear of injury contained in OCGA § 24-3-50; regardless of whether the police officer's statements, "Did you touch her anywhere?...[O]kay, I mean, if you did, I mean, you know, you're not in any danger at this point" are misleading or not, the test for the admissibility of a confession obtained by use of trickery or deceit is whether the means employed are calculated to procure an untrue statement)

Griffin v. State, 257 Ga. App. 167, 570 S.E.2d 611 (2002) ("slightest hope of benefit" means the hope of a lighter sentence; insofar as "remotest fear of injury" is concerned, any confession obtained through physical or mental torture is inadmissible; police officer's statement, "Have you got anything in your past? Because if you don't tell me the truth, there ain't nothing I can do to help you," did not convey the hope of a lighter sentence and therefore the resulting confession was not inadmissible; an officer may tell a defendant that he would be helping himself by telling the truth; telling defendant that his girlfriend might get in trouble because she drove the getaway car does not promise a lighter sentence)