

practical for the officers to attempt literal compliance with the statute, and in the opinion of this court it is unreasonable to say that such was their duty. Under the foregoing circumstances pending return of the regular time for official business, we think the officers acted with legal propriety.

What is a reasonable time depends upon the facts in each case, to be considered with regard, among other things, to such matters as judicial accessibility and facility, intervention of a Sunday or a holiday, the intoxicated or mental condition of the person detained. *Fouraker v. Kidd Springs Boating and Fishing Club* (Civ. App., 65 S.W. 2d 796).

Fact that defendant accused of nighttime burglary of private residence was not taken before magistrate, as is contemplated by this article, did not of itself require rejection of confession made while defendant was under arrest. *Henson v. State* (159 Cr. R. 647, 266 S.W. 2d 864).

Fact that defendant was confined in jail from time of his arrest at 8 p.m. until following morning did not show an unreasonable or unnecessary delay in taking him before a magistrate. *Gilbert v. State* (162 Cr. R. 290, 284 S.W. 2d 906).

Where defendant was arrested about 10:45 p.m. and taken to a hospital where a blood specimen was taken at 12:45 a.m. and then to the police station where he made a statement between 1 and 2 a.m. and complaint was filed after 2:25 a.m. confessions of defendant were not required to be excluded because defendant was not taken before a magistrate or because of unreasonable delay in filing of a complaint. *Mitchell v. State* (Cr. App., 312 S.W. 2d 245).

Where accused was arrested about 8 o'clock on Saturday night and made confession on Sunday morning, there was no unreasonable delay in taking accused before a magistrate.

A confession made while under arrest is not inadmissible as a matter of law because officers failed to take accused before magistrate. *Childress v. State* (Cr. App., 312 S.W. 2d 247).

Article 727. Code of Criminal Procedure. State of Texas, When Confession Shall Not Be Used

The confession shall not be used if, at the time it was made, the defendant was in jail or other place of confinement, nor while he is in the custody of an officer, unless made in the voluntary statement of accused, taken before an examining court in accordance with law, or be made in writing and signed by him: which written statement shall show that he has been warned by the person to whom the same is made: First, that he does not have to make any statement at all. Second, that any statement made may be used in evidence against him on his trial for the offense concerning which the confession is therein made; or, unless in connection with said confession, he makes statements of facts or circumstances that are found to be true, which conduce to establish his guilt, such as the finding of secreted or stolen property, or the instrument with which he states the offense was committed. If the defendant is unable to write his name, and signs the statement by making his mark, such statement shall not be admitted in evidence, unless it be witnessed by some person other than a peace officer, who shall sign the same as a witness.

DECISIONS

In absence of evidence of a long and continued questioning by reason of which confession resulted, or that 3½ days' confinement or failure to take defendant before magistrate caused defendant to make confession, failure of officers to file charges against defendant or to take defendant before a magistrate before confession was made did not constitute denial of due process of law and did not render confession inadmissible. *Dimery v. State* (Cr. R. 156, 197, 240 S.W. 2d 293).

The *McNabb* rule that a confession is inadmissible if made during illegal detention due to the failure to promptly take prisoner before committing magistrate, whether or not confession is result of torture, is not controlling in State trials. *Golemon v. State* (157 Cr. R. 534, 247 S.W. 2d 119, certiorari denied 73 S. Ct. 60, 344 U.S. 847, 97 L. Ed. 659, rehearing denied 73 S. Ct. 174, 344 U.S. 882, 97 L. Ed. 683).

Failure to take accused before magistrate does not invalidate a confession unless such failure, in some manner, causes or contributes to bring about the confession. *Id.*