

conviction should be set aside and the case remanded for a new trial because a confession obtained in violation of Rule 5(a), F.R.Cr.P., was admitted into evidence.

This case was tried in the District Court before our opinions in *Naples v. United States*, No. 16,436 (decided April 13, 1962, opinion rendered May 8, 1962), and *Williams v. United States*, No. 16,793 (decided May 4, 1962), were announced. In those cases the defendants, after confessing orally at police headquarters, and prior to being taken "before the nearest available" committing magistrate, made additional incriminatory statements on being returned to the scenes of their crimes for further police investigation. This we held to be "unnecessary delay" under *Mallory*¹ and ruled the additional statements inadmissible on timely objection.²

Here the facts are substantially the same as in *Naples* and *Williams*. The police, having brought appellant and several witnesses to the killing of one Claude R. Smith to homicide headquarters for questioning, without undue de-

¹ *Mallory v. United States*, 354 U.S. 449.

² In *Naples* we reversed the conviction, timely objection to the admission of the additional statements having been entered. In *Williams*, where timely objection was not made, we stated:

"Had there been timely and adequate objection at the trial, we could agree with the argument advanced by counsel appointed by this court that the trial judge should have excluded the statement attributed to Williams when he was brought back to the store of the National Coin Company. By that time, the police already were possessed of ample evidence of probable cause upon which they could and should have brought Williams before the Commissioner. Instead, they took the appellant to the scene of the crime. The statement then made could be said to have been elicited during a period of unreasonable delay, and hence to have been erroneously received in evidence. * * *" (pp. 4-5, slip opinion).