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Evidence-Res Gestae-Connecting Circumstances

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INDIANA UNIVERSITY
Maurer School of Law
Bloomington

EVIDENCE—RES GESTAE—CONNECTING CIRCUMSTANCES—Charles Phillips, an employee of G. W. Opell Company, had loaded a truck with bread at his employer's plant and, before delivering this bread, returned to his home at 5 a. m., as was his custom, to eat breakfast. After eating he went outside with a bucket of water to fill the radiator, and while doing this was shot and died soon after. Before dying he told his wife that one Green, a neighbor, had fired the shot. The police were notified; they arrested Green, took him to the police station, and held a conversation with him about 1½ hours after the shooting. Phillips' widow brought proceedings under the Workmen's Compensation Act against appellant, and introduced as a witness the chief of police who had examined Green. Appellant objected to this testimony on the ground that it was hearsay as to Green's declarations made to the witness. From an award in favor of appellee, the G. W. Opell Company appeals. *Held*: Reversed with directions to Industrial Board to set aside its award. The testimony of what Green said was incompetent, and without it there is no basis for an award of compensation. *G. W. Opell Co. v. Phillips et al.*, Appellate Court of Indiana, December 20, 1929, 169 N. E. 354.

It was held in *Daywitt v. Daywitt*, 63 Ind. App. 444, that surrounding facts and accompanying declarations to explain the act done or the motive therefor, are included in the res gestae and are admissible though hearsay. The court gave little consideration to appellee's contention that Green's statements to the officer were part of the res gestae; without discussing the matter it decided the evidence was "pure hearsay." To be admissible as part of the res gestae, declarations usually must be made contemporaneous with the principal fact, or so near in point of time that they will be regarded as part of the transaction. *Ft. Wayne Tract. Co. v. Roudebush*, 173 Ind. 57. There is ample authority within and without the state to support the court's view that under the circumstances this was not part of the res gestae. *Golibart v. Sullivan*, 30 Ind. App. 428, a suit for false imprisonment, held that statements made by defendant to a policeman after the plaintiff had been released were properly excluded. And the testimony of a policeman concerning his conversation with the driver of a car immediately after an accident, was not received as part of the

res gestae, because his investigation and inquiry necessarily broke the continuity between the main facts sought to be elicited and the narrative given of it. *Itzkowitz v. Renbel & Co.*, 250 S. W. 535. Evidence of a conversation with the foreman of a shop, who had seen an employee injured, was excluded although the conversation was held soon after the accident. *McKinnon v. Norcross*, 20 N. E. 183; *Supreme Council, etc. v. Quarles*, 97 S. E. 557.

It has been said that each case involving the question of res gestae must be determined in the light of its own facts, because varying conditions alter the application of the rule so materially. When there are connecting circumstances, declarations even though made some time after the transaction, may form a part of the whole res gestae. *Ins. Co. v. Mosley*, 8 Wall. (U. S.) 397. And the fact that the statements were made in the course of conversation with a third person, not a party to the transaction, does not necessarily indicate that it was premeditated and therefore not part of the res gestae. *Pratt v. State*, 96 S. W. 8. A confession made while under arrest, and therefore incompetent as a confession, was held admissible as part of the res gestae. *Powers v. State*, 5 S. W. 153. The fact that a statement was made in response to an inquiry indicates that it was not entirely spontaneous, and this alone has been held sufficient to require exclusion of the statement when offered as being within the res gestae. However, other circumstances may sufficiently show that the statement was spontaneous in spite of its being made in response to a question. Especially is this true when the statement is inculpatory or against interest. *Head v. State*, 44 Miss. 731.

It is entirely possible that in another jurisdiction the proffered evidence might have been admitted as part of the res gestae on the theory that Green's statements to the officer must have been spontaneously made and while under the influence of the main transaction, for it is improbable that a man would admit a homicide so glibly, and (seemingly) without compulsion. The decision as handed down, however, is in accord with the vast majority of cases on the subject.

J. W. S.