Alabama Rules of Evidence

Article IV. Relevancy and Its Limits

Rule 410.

Inadmissibility of pleas, plea discussions, and related statements.

Except as otherwise provided in this rule, evidence of the following is not, in any civil or criminal proceeding, admissible against the defendant who made the plea or was a participant in the plea discussions:

(1) a plea of guilty which was later withdrawn;

(2) a plea of nolo contendere in a federal court or criminal proceeding in another state;

(3) any statement made in the course of any proceedings under Rule 11 of the Federal Rules of Criminal Procedure or comparable state procedure regarding either of the foregoing pleas; or

(4) any statement made in the course of plea discussions with an attorney for the prosecuting authority which do not result in a plea of guilty or which result in a plea of guilty later withdrawn.

However, such a statement is admissible (i) in any proceeding wherein another statement made in the course of the same plea or plea discussions has been introduced and the statement ought in fairness to be considered contemporaneously with it, or (ii) in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record and in the presence of counsel, or (iii) in any subsequent proceeding wherein voluntary and reliable statements made in court on the record in connection with any of the foregoing pleas or offers are offered as prior inconsistent statements.

Advisory Committee's Notes

Evidence that a person has offered to compromise a criminal prosecution, especially evidence that the person entered a guilty plea that was later withdrawn, historically has been excluded when offered against the defendant. This general exclusion has been recognized by the highest courts in both the federal and Alabama systems. See, e.g., *Kercheval v. United States*, 274 U.S. 220 (1972); *Sanders v. State*, 148 Ala. 603, 41 So. 466 (1906). See also *Lankford v. State*, 396 So.2d 1099 (Ala.Crim.App.1981); C. Gamble, McElroy's Alabama Evidence § 188.04 (4th ed. 1991); J. Colquitt, Alabama Law of Evidence § 4-10 (1990). This exclusion, based largely upon a policy of encouraging the communication necessary for

settlement, is adopted and expanded by Rule 410, which is almost identical to Fed.R.Evid. 410, upon which it is based.

The breadth of the exclusion regarding evidence of an offer to compromise a criminal prosecution is here expanded to include, in addition to evidence of the plea itself, any statement made in the course of plea discussions with an attorney for the prosecuting authority. Compare Ala.R.Crim.P. 14.3(d) (excluding evidence of "the plea discussion"). The "any statement" language reverses preexisting Alabama case law under which an express admission, made in the course of the defendant's efforts to effectuate a compromise, would be admissible. See *Harrison v. State*, 235 Ala. 1, 178 So. 458 (1937), cert. denied, 235 Ala. 292, 178 So. 460 (1938). Rule 410 does not exclude voluntary admissions made to a law enforcement official or other person without the authority to enter a plea bargain. See E. Cleary, McCormick on Evidence § 159 (3d ed. 1984) (discussing the policies underlying the reception of admissions made by the defendant to law enforcement officers in the hope of obtaining leniency).

While Alabama does not recognize a plea of nolo contendere, Rule 410 excludes evidence of such pleas entered in federal courts or in the courts of other states. Such nolo contendere pleas are to be treated the same, under the rule, as withdrawn guilty pleas.

Any statement made during proceedings regarding guilty pleas or nolo contendere pleas, conducted in a federal court under Rule 11 of the Federal Rules of Criminal Procedure or during proceedings conducted in a state court under a comparable procedure, is likewise excluded.

Rule 410 does not address the question whether a witness may be impeached by the witness's prior conviction on a plea of nolo contendere. This issue is left to be resolved under Rule 609. Such impeachment would not be precluded by Rule 410 so long as the conviction meets the requirements otherwise applied under Rule 609.

The Rule 410 exclusion of evidence regarding a plea or a plea bargain statement applies in both civil and criminal proceedings where the evidence is offered against the defendant. The phrase "against the defendant who made the plea or was a participant in the plea discussions" makes it clear, however, that such evidence could be used, in an appropriate case, to impeach. See *United States v. Mathis*, 550 F.2d 180 (4th Cir.1976), cert. denied, 429 U.S. 1107 (1977); *Giglio v. United States*, 405 U.S. 150 (1972) (recognizing that such a right may rise to a constitutional level).

Alabama, by adopting Rule 410, follows the lead of those seven states that have provided for the use of withdrawn guilty pleas, nolo contendere pleas, and plea bargaining statements when offered to impeach the defendant by evidence of a prior inconsistent statement. The only nonplea statements usable for such impeachment are those that were voluntary, reliable, and made in court on the record. Compare Alaska R.Evid. 410; Colo.R.Evid. 410; Fla.R.Evid. 410; Idaho R.Evid. 410; Mont.R.Evid. 410; Neb.R.Evid. 410; N.D.R.Evid. 410.