Abstract
Admissibility of confessional statements poses a serious challenge at criminal trial. The challenge is enormous because upon arrest and in the course of custodial interrogation, the police, like any other law enforcement, investigative and interrogative Agency, may obtain extra-judicial confessions from suspects by several methods and are often sought to be tendered in evidence as exhibits. The admissibility of such evidence is often times challenged on the ground of involuntariness or out rightly retracted notwithstanding that they may be relevant. The relevance and non-exclusion of such evidence by law however notwithstanding, the court, upon the defences’ challenge to their admissibility on ground of involuntariness, may refuse their admissibility at the trial-within-trial because such evidence have failed one admissibility test or the other. Often times when admitted however as having satisfied the admissibility tests and relevant, they may not scale through the hurdles of credibility and veracity hence they may attract little or no weight when writing judgment. Using the doctrinal methodology, the paper examines confession and its evidential implications, poses and answers four fundamental questions regarding admissibility and conviction based on confessional statements. It analyses the concept of evidence and related issues of admissibility of confessional statements such as the probative value of evidence. A conclusion is drawn and recommendations are offered.

Keywords: Confessions, Admissibility, Defences, Judges Rule, Evidence, Nigeria

1. Introduction
One of the important duties of the police is the pre-trial investigation of crimes and prosecution of offenders. A suspect may confess to a crime in the course of interrogation upon which the court may be called upon by the prosecutor to convict him as charged. He may thus be convicted insofar that the confession is positive, direct, unequivocal, voluntary and meeting the rules of admissibility. The paper poses and answers four main questions around which the challenges in the admissibility of confessional statements are hinged. The first is whether a court can legally and ought to convict an accused upon his confession in view of the constitutional provision that every person charged with a criminal offence shall be presumed innocent until he is proved guilty?. The second is whether admissibility of a confessional statement can only be rejected on the two grounds of non-compliance with the Judges Rules and not having been verified and endorsed by a Superior Police Officer cumulatively? The third is what is the effect on admissibility, If a confessional statement only complies with the Judges Rules simpliciter to the neglect of being verified or endorsed by a Superior Police Officer? The fourth and final is what is the effect on admissibility, if a confessional statement is only verified and endorsed by a Superior Police Officer without having complied with the Judges Rules?

Undoubtedly, the police investigation techniques of detection of crimes have been developed over the years to serve the end of justice. Thus a confession that meets the requirement of the tests of admissibility without more, may be sufficient to ground a conviction for an offence charged and admitted. This is taken as having satisfied the requirement of proof beyond reasonable doubt in criminal cases. Such police
investigation and interrogation techniques include the Judges Rules and the practice of having a suspect together with his confessional statements taken before a Superior Police Officer for verification and endorsement to confirm its voluntariness. Thus the courts, upon ascertaining that a confession is positive, direct, voluntary and unequivocal, do admit such statements in evidence as having satisfied the test of authenticity, legitimacy and reliability\(^3\). The examinations of these issues are the main focus of this paper. Thus, the answers to the above questions are intended to provide us with the evidential value of confession which is said to be very great, much sought after by the police and lightens the burden of prosecution by dispensing with the need of calling a host of witnesses in cases where there are no or very few eye witnesses\(^4\). Conclusively, the paper examines the issue whether beyond the prosecution succeeding in securing a confessional statement from a suspect and getting the court to admit same in evidence, his duties extends beyond these if he must secure a conviction based on such evidence?

2. Confession and its Evidential Implications

Confession is an admission made at any time by a person charged with a crime stating or suggesting the inference that he committed that crime\(^5\). The Supreme Court gave a more lucid definition of confession in the case of *State v Jimoh Salawu*\(^6\) as follows:

> Statements which are direct acknowledgment of guilt ought to be regarded as confessions. There must be clear acknowledgment of guilt before an admission would amount to a confession. Put in another way, a confession is a voluntary admission by a person of his participation in a crime and a trial court can convict on a confessional statement of an accused person\(^7\).

The court further pointed out that a confessional statement made by an accused person and properly proved is the best guide to the truth of the part played by him. It is an admission by the accused person that he committed the offence and therefore in the nature of his plea of guilty to the offence. Also it has been said that once a confession meets the test of admissibility, it alone, without more is sufficient to ground a conviction for the offence which was admitted therein and that the requirements of proof beyond reasonable doubt in criminal cases would have been met completely and fully satisfied by such a confession\(^8\). The use of confessions in the criminal justice administration is said by legal experts and psychologists to be modeled after two goals. The first is the crime control model which emphasizes the need to control crimes in the society, that is, the conviction of the guilty and protection of the victim. The second is said to be the due process model which lays more emphasis on protecting the rights of suspects aimed at guiding against false confessions and wrongful convictions\(^9\).

From whichever perspective one looks at confession however, the law on confessions is out to address three basic and fundamental problems viz; authenticity, legitimacy and reliability. Authenticity has to do with whether the statement or part of it was made at all by the accused or fabricated by the police for instance where the accused was coerced or tricked to sign an already written fabricated confessional

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\(^3\) See *Saidu v State* (1982) 4 SC 41 particularly at p.69

\(^4\) Ibid at 68

\(^5\) S.28 of the Evidence Act, 2011 hereinafter referred to as (“E.A, 2011”)

\(^6\) (2011) 18 NWLR (pt. 1279) 883

\(^7\) Ibid per Rhodes – Vivour JSC at 922

\(^8\) See *Osho v State* (supra) at 285-286

statement. Legitimacy has to do with whether the statement itself is voluntary or not, looking at the pressure and encouragement exerted on the accused to confess against his will. The nature of such pressure at the interrogation includes; torture or violence, intimidation, degrading treatment, sleep deprivation, deprivation of basic necessities of life such as food, medication, denial of access to lawyer etc. Reliability on its own has to do with whether the confessional statement is correct or not. All these measures are meant to guide against the inherent dangers in confessions which is one of the major exceptions to the hearsay rule.

A confession is generally made in writing to a police officer or other law enforcement agents but it would by no means be irrelevant, inadmissible or carry less weight if made orally but passes the test of admissibility. A deductive reading of the provisions of the Evidence Act, 2011 and case law, elicit some basic rules of admissibility of confessions in Nigeria which are strict and must be complied with by the police and prosecutors. These rules attempt to ensure authenticity, legitimacy and reliability of confessions. These rules of admissibility of confessional statements are said by the Supreme Court to be very stringent and that it is because of these stringent rules that such statements cannot be admitted with consent or from the bar even without objection by the defence if it is in breach of these rules on admissibility. According to the Supreme Court;

It is to ensure that the innocent in our society is not deprived of his life or liberty that our laws have laid down very strict test of admissibility for confessional statements before they become available legal evidence for assessment and evaluation. Any piece of evidence which slips into the record of proceedings without passing the test of admissibility is not legal evidence and is liable to be expunged by the appeal court.

What then are these rules of admissibility of confessional statements?

A confessional statement must be positive, direct and unequivocal as far as the charges are concerned.

The statement must admit all the ingredients of the offence charged in order to qualify as a confessional statement. The Supreme Court in Bature v State said: ‘It is settled law that if a person makes a free and voluntary confession which is direct, positive and unequivocal and made out of consciousness to uphold truth even in the face of death, it can … support a conviction of murder’. A conviction of a store keeper in this case charged for 12 counts of stealing specific items when document prepared showing 23 items of shortages in the appellant stock was quashed on appeal as the purported confession of having taken certain stock and sold them was held as neither direct nor positive on the items contained in the charges. Likewise, a statement which is merely narrative will also not amount to a confessional statement. It was held that for a confessional statement to be positive and direct, it must have admitted both the actusreus and

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10 Ibid at pp.323-325
12 Ibid PerObaseki JSC (as he then was) at p.29 (underlining for emphasis only).
13 (1994) SCNJ 19
14 Ibid per Onu JSC (as he then was) at p.29
15 See Afolabi v COP (1961) All NLR 654. See also Ojo v FRN (2008 11 NWLR (pt. 1099) 467
mensrea of the offence. The same principle applies to judicial admissions which require that before an accused is convicted on his admission of guilt, all the ingredients of the offence must have been explained to him and he admitted the crime. Thus in Kayode v state, the conviction of the appellants on charges of being involved in cultism to which four of the accused pleaded guilty to, was squashed on appeal because the record of proceedings did not show that all the ingredients of the offence were explained to the appellants and they admitted them serially as required by section 161 of the Criminal Procedure Code.

Confessional statement could either be oral or writing. Usually a confessional statement is made to somebody. If it is oral confession, the person before whom it was made can come to court and give such evidence as in the case of Sunday Onugwa v The State. Here in this case, the senior brother of the appellant, among other members of the family before whom the appellant confessed his ownership of the blood stained machete recovered at the scene of the murder and adding that he had killed the deceased as a result of the work of the devil amidst other members of his family present, came to court to testify of that extra-judicial admission made by the appellant and the Supreme Court affirmed the evidence of confession as relevant and admissible in so far it was made voluntarily. If on the other hand the confession is a written confession, the statement is usually proved by the investigating police officer. Thus in the case of Kasa v State, three written confessions of the accused were tendered at the trial.

A confessional statement can be made at any time after the commission of the crime. An extra-judicial confessional statement is the one made by the accused before been charged to the court, usually made to a police officer or any officer or any other person whether in authority or not. A judicial confession on the other hand is the one made in the open court by the accused in the course of his trial, usually when his plea is being taken or while giving evidence in his defense.

A confession must be relevant and voluntary. A major condition for the admissibility of confessional statement is that it must be relevant and voluntary. Although the Evidence Act, 2011 avoids the use of the word voluntary as was the case under the repealed Evidence Act, section 29 (1) of the Evidence Act, 2011 states that in any proceedings, a confession made by a defendant may be given in evidence against him in so far as it is relevant to any matter in issue in the proceedings and is not excluded by the court in pursuance of this section. Thus, while avoiding the use of the word ‘voluntary’, the 2011 Act however uses the words ‘oppression’ and ‘unreliable’. Section 29 of the Evidence Act in its general exclusionary principle provides that any confession obtained by oppression of the defendant or made in consequence of anything said or done to the defendant which was likely to render the confession unreliable is inadmissible. This section has thus created new grounds for inadmissibility of confessions which are oppression and unreliability. The Act provides:

If in any proceeding where the prosecution proposes to give in evidence a confession made by a defendant it is represented to the court that the confession was or may have been obtained:

1. By oppression of the person who made it; or

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19 (1976) 2 SC 169. See also Ismail v State (2008) 15 NWLR (pt. 1111) 593
20 (1994) 6 SCNJ (pt.1) 13
21 See ss. 27(2) and 28 of the repealed E.A cap. E14 LFN, 2004
In consequence of anything said or done which was likely, in the circumstances existing at the time, to render unreliable any confession which might be made by him in such consequence, The court shall not allow the confession to be given in evidence against him except in so far as the prosecution proves to the court beyond reasonable doubt that the confession (notwithstanding that it may be true) was not obtained in a manner contrary to the provisions of this section.

Even though the court is permitted to suomotu raise the issues of oppression or unreliability of a confession and order a trial within trial, the defendant most often raises it thus calling for trial within trial. At this mini-trial, the defendant needs just to raise the issue of oppression or raise evidence of unreliability while the prosecution counters the defendant’s allegation by proving beyond reasonable doubt that the confession was not obtained against the law. Section 76 (2) of the English Police and Criminal Evidence Act (PACE), 1984 (equivalent of Nigerian section 29 (2) Evidence Act, 2011) fell for interpretation in the case of In Paris and it was held:

Three points on that section require emphasis:
First, the issue having been raised by the defence, the burden of proving reasonable doubt that neither 2 (a) nor 2(b) applied was on the crown.
Secondly, what matters was how the confession was obtained, not whether or not it may have been true.
Thirdly, unless the prosecution discharged the burden of proof, the judge was bound as a matter of law to exclude the confession. His decision was not discretionary.

Judicial precedents on the interpretation of this exclusionary principle of evidence contained in Section 29 of the Evidence Act are still relatively scarce. However, being that the provision of section 76 (2) of the English PACE, 1984 are similar to section 29 (2) of the Evidence Act, 2011, judicial decisions of English courts on the subject matter, being of persuasive authority shall be relied on substantially here. Basically however, only reliable confessions are relevant and admissible. The court must however in determining whether or not a confession is reliable, examine everything said or done to the defendant from the time of his arrest up to the end of his interrogation and determine whether any confession obtained in such circumstances would be unreliable. Section 29 (2) of the Evidence Act has set up objective test such that if the acts done or words spoken were likely to induce an unreliable confession, then even if the confession was true, it would still be unreliable and inadmissible. While the Evidence Act defines oppression to include torture, inhuman or degrading treatment and the use or threat of violence, these instances of oppression no doubt, can still admit of similar incidences in that category. On the other hand however, the Evidence Act did not specify the conditions or circumstances that must exist before the trial court can invoke the prohibition against unreliability that can render any confession pursuant thereto inadmissible. This presupposes therefore that those conditions that would render a confession unreliable cannot be closed. We shall now examine some of the oppressive circumstances and thereafter examines some unreliable confessions.

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22 See S.29 (2)(a) E.A, 2011
23 Ibid at S.29 (2)(5)
25 (1993) 97 CAR 99
26 Ibid Per Lord Taylor C.J at 103
Confessions Vitiated by Oppression

It has already been asserted that the Evidence Act having rendered a confession obtained by oppression inadmissible, goes further to give instances of oppression\textsuperscript{27}. Since the definition of oppression in section 29 (5) of the Evidence Act is not exhaustive, a resort will be made to the dictionary for the ordinary meaning of the word as we are enjoined to do by the case of \textit{Fulling}\textsuperscript{28}. Thus oppression is defined by the Black’s Law Dictionary\textsuperscript{29} as:

The misdemeanor committed by a public officer who under color of his office, wrongfully inflicts upon any person any bodily harm, imprisonment, or other injury. An act of cruelty, unlawful exaction, or excessive use of authority. An act of subjecting to cruel and unjust hardship, an act of domination (resulting from abuse of authority or power)\textsuperscript{30}.

It is instructive to note that the use of torture, inhumane or degrading treatment or its threat is a violation of the fundamental rights of a defendant\textsuperscript{31}. Also any confession obtained by acts which infringes the fundamental constitutional rights of a defendant, can also be excluded under section 14 of the Evidence Act, 2011 on the ground that such confession was obtained in consequence of an impropriety or in contravention of a law. Some broad situations that may constitute oppression of a defendant are:

i. \textbf{Torture, threat or use of violence} - This involves the application of direct physical force on the defendant or to any person related or closely connected to him. Likewise, a mere threat of violence to the defendant or his relative will also constitute oppression which can be a ground for challenging voluntariness of a confession\textsuperscript{32}. The courts are bound to reject a confession of an accused eventuated from torture, duress, threat or inducement\textsuperscript{33}.

ii. \textbf{Denial of food or other necessities of life} - Denial of food and other basic necessities of life such as medication can amount to degrading, unjust, cruel and inhuman treatment\textsuperscript{34} that can void confession.

iii. \textbf{Undue Hostility and intimidation} - Undue hostility or intimidating conduct towards the defendant by Police officer during interrogation may suffice a valid ground for challenging a confession by reason of oppression. For instance, \textit{In Paris},\textsuperscript{35} bullying and harassing a defendant by an interrogating police was held oppressive by the court. Also in \textit{Hudson},\textsuperscript{36} use of bad language and using excessive loud voice by an interrogating police against an accused was held as oppressive because the defendant was said not to be a hardened criminal. So the nature or demeanor of a defendant may to a large extend determine what conduct of an interrogating police officer may amount to oppression or not.

iv. \textbf{Prolonged custody of the defendant} - The unlawful and prolonged custody of a defendant can be a ground for challenging a confession by reason of oppression. The law in Nigeria is that any person arrested or detained shall be brought before a court of law within a reasonable time and where the defendant is in custody without bail, he must be tried within two months from the date of his arrest or

\textsuperscript{27} See notes 23 and 24 (Supra)
\textsuperscript{28} (1987) 85 CAR 136 at 138
\textsuperscript{29} HC Black, \textit{Black’s Law Dictionary}. 6\textsuperscript{th} ed. USA: St. Paul Minn. (West Publishing Co.) 1990 at 1093. Print.
\textsuperscript{30} Ibid
\textsuperscript{31} See SS.34 (1)(a) of the 1999 Constitution
\textsuperscript{32} See S.29(5) E.A,2011
\textsuperscript{33} See \textit{C.O.P v Alozie} (2017) LPELR-41983 (SC) Per Nweze JSC
\textsuperscript{34} See S.34(1) (a) of the 1999 Constitution, s.29(5) E.A. 2011.S
\textsuperscript{35} (Supra)
\textsuperscript{36} (1980) 72 CAR 163
detention. Therefore keeping a defendant in custody for more than two months, without trial, in violation of the constitution or for longer than the term of imprisonment prescribed for the offence, may constitute oppression under section 29 (2) (a)&(b), (5) of the Evidence Act. As said earlier, the circumstances of oppression are not closed but the above cogent examples are given.

Confessions Vitiated by Unreliable Circumstances

We need remind ourselves that by section 27 of the repealed Evidence Act, only voluntary confessions were relevant and admissible. While the said repealed Act did not define the term ‘Voluntary’, the conditions which will make a confession not to be voluntary were however defined by that Act. Under the Evidence Act, 2011, while the conditions which will make a confession to be regarded as reliable are not defined or limited by section 29 of the 2011 Evidence Act, the circumstances and conditions, that can make a confession to have been obtained by oppression are partly defined and specified in section 29 (5) of the 2011 Act. By and large however, voluntariness as what was the barometer for admissibility of confessions under the repealed Evidence Act was a narrower concept than reliability but previous judicial decisions on voluntariness of confessions are still relevant in the application of section 29 (2) of the Evidence Act, 2011 as we have seen in the case of In Paris interpreting section 76 (2) of the English Police and Criminal Evidence Act (PACE), 1984.

Circumstances of unreliable confessions will include the following:

i. **Denial of access to counsel** - A detained defendant on interrogation who is denied right to counsel may render a confession unreliable. This is also a violation of his fundamental constitutional and statutory rights.

ii. **Non-compliance with custodial interrogation Rules** - A Violation of the rules of custodial interrogation may render a confession unreliable and inadmissible. Because of the strict rules required of a confessional statement before it may be admitted, the Judges of the kings Bench Division in England in 1912 formulated what is generally referred to as the Judges Rules for the guidance of police in obtaining statement from person in custody or suspected of criminal offences. The Rules became applicable to the whole Nigeria in 1964 but in 1960, the former Northern Region of Nigeria enacted its own separate rules known as Criminal Procedure (Statement to Police Officers) Rules which is substantially the same as the Judges Rules. The Judges Rules which laid down *inter-alia*, that persons in custody should not be questioned without the usual caution first administered are Rules of caution laid down by the Judges in England to be followed in that country. They should be followed *mutatis mutandis* as far as possible and practicable in Nigeria. What is essential about the Rules is that the court before admitting an evidence should be satisfied that the statement was duly made voluntarily and not prompted by any promise or inducement or any violence. The summary of the Rules are as follows:

37 See S.35(4) of the 1999 Constitution
38 See S.28 of the repealed Evidence Act
39 (Supra)
41 See R v Ugwogwu & Ors (1943) 9 WACA, 75
42 Ibid. See also Afolahan v State (2012) 13 NWLR (Pt.1316) 185, where the Court of Appeal held that the burden of proving that a confession is voluntary is on the prosecution and that the burden is discharged by leading evidence to show that in obtaining the statement, the police complied with the usual rules, practice and procedure i.e. Judges Rules.
Rule One - That the Police in trying to discover whether or by whom an offence has been committed is entitled to question any person whether suspected or not, whether that person has been taken to custody or not from whom he thinks that useful information may be obtained.

Rule Two - That as soon as a police officer has gotten evidence which would afford him reasonable grounds for suspecting that a person has committed an offence for which a charge could be preferred, he shall caution or cause that person to be cautioned before putting to him any question or further questions relating to that offence. The caution runs thus: ‘You are not obliged to say anything unless you wish to do so but whatever you say may be put in writing and given in evidence’.

Rule Three: - That where a person is charged with or informed that he may be prosecuted for an offence, he should be cautioned before any such questions are put to him. That any question put and answer given relating to the offence must be contemporaneously recorded in full and the record signed by that person or if he refuses, by the interrogating officer. Further, if the person questioned elects to make a statement, a record of the time and place at which such questioning or statement began or ended and of the persons present shall be kept. The caution runs thus: ‘Do you wish to say anything? You are not obliged to say anything unless you wish to do so but whatever you say will be taken down in writing and may be given in evidence’.

Rule Four: This rule relating to written statement after caution, portrays what happens where an accused can and intends to write, and where he cannot write or can write but does not want to write. Where he can and intends to write, he should be asked to write and sign the following statement before starting to write: ‘I make Statement of my freewill. I have been told that I need not to say anything unless I wish to do so and that whatever I say may be given in evidence’. Where the accused cannot or can but does not intend to write and he wants someone to write for him, a police officer may offer to write for him. If the accused accepts this offer, the police officer shall, before starting, ask the suspect making the statement to sign, or make his mark to the following words: ‘I------ wish to make a statement. I want someone to write down what I say. I have been told that I need not say anything unless I wish to do so and that whatever I say may be given in evidence’.

The police having completed the writing in the exact words of the suspect without putting questions to the suspect and without prompting him, the suspect shall then be asked to read and make corrections, if need be. Thereafter, the suspect shall be asked to write and sign or make his mark at the certificate in the following words: ‘I have read the above statement and have been told that I can correct, alter or add anything I wish. This statement is true and I have made it of my own free will’. If the suspect refuses to read or write the above mentioned certificate at the end of it or sign it, the Senior Police Officer present shall record on the statement itself and in the presence of the suspect, all what has happened and certify on it what he has done.

Rule Five: Is simply to the effect that if the police/prosecution intends to employ the extra-judicial statement of a suspect in a joint trial against a co-accused, a copy of same should be made available to the co-accused so that he could have an opportunity to react to the statement. Failure to make a copy of such statement available to the co-accused makes the statement inadmissible against him.

Rule Six: Is to the effect that persons other than Police Officers Charged with the duty of investigating offences or charging offenders shall, so far as may be practicable, comply with these Rules. It is striking to know that though Judges Rules are purely administrative directives and do not have force of law, the Supreme Court has held that a confession which contravenes any of the Rules of the Criminal Procedure (Statements to Police Officers) Rules will not be admissible.

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44 See R v Viosin (1918) 1 K. B 531
It is important to note also that apart from complying with the Judges Rules, the Nigerian Police have evolved a practice of taking a suspect who has made a confessional statement to a superior police officer or a district officer at the earliest possible time to give such a suspect the opportunity to deny or retract the statement. Where this practice is followed, the courts have said it may add to the weight to be attached to the statement but that failure to observe it does not reduce the weight which normally attaches to any statement proved to have been made voluntarily. Also the Supreme Court has added that the practice is not a requirement of the law and its non-observance does not make a confessional statement inadmissible. Non-Compliance with custodian interrogation rules can also take the form of failure to properly caution a suspect about his right to remain silent until he engages a counsel and before making a confession during interrogation. This will be a valid ground for challenging the reliability and constitutionality of such confessions. Thus, failure to caution a defendant of his right to remain silent and the denial of access to counsel during interrogation is a ground for challenging the admissibility of a confession. In the American popular case of *Miranda v Arizona* the Supreme Court of the United States held that, the prosecution may not use statement of a defendant obtained by law enforcement officers during custodial interrogation unless it demonstrates the presence of effective safeguards to secure the privilege against self-incrimination under the 5th Amendment. These safeguards are that the suspects must, prior to the interrogation be informed clearly that he has the right to remain silent and, that anything he says may be used against him in a court of law and the suspect must be informed clearly, that he has the right to consult with a lawyer and to have the lawyer present during interrogation.

iii. **Inducement and Promise:** Any inducement or promise made to a defendant to obtain his confession will be a valid ground to challenge the reliability of such confession. This will include an inducement to merely make a statement usually on a promise of advantage from confession or a threat of disadvantage from not confessing. A promise of leniency or exclusion from prosecution will make a confession pursuant thereto unreliable and inadmissible.

The inducement or promise may either concern or be made to the spouse of the defendant or family member or any other person intimately connected to the defendant such as a lover or friend which causes the defendant to make a confession. Inducement or promise is no longer required to be made by a person in authority but must still relate to the charge against the defendant. Also the defendant must have believed that by making the confession, he would gain an advantage or avoid an evil of a temporal/physical nature. Therefore the threat of juju or witchcraft is not a threat of a temporal/physical nature and belief in witchcraft or other spiritual powers, is subjective. Also to be emphasized is that a confessional statement made after the ceasure of threat, inducement or promise will be admissible. Thus in *R v Haske*, it was held that the second confessional statement made to the police was admissible if the threat that accompanied the first one had dissipated at the time of making the first statement.

45 See *Ozaki v State* (1990) 1 NMLR12
46 See *R v Sapele* (1957)2 FSC 24; *Nwaigboke v R* (1959) 4 FSC 26
47 See *Nwigoke v R* (Supra). See *Adeyinka Ajiboye v FRN* APPEAL NO. SC.519/2015 delivered on 18/05/2018
49 See s.35 (2) of the 1999 Constitution, SS.14, 29 (2)(b) E.A, 2011.
50 (1966) 384 US, 486. See also Dickson,(2000) 530 US 428
51 See *Omotosho v C.O.P* (1961) NSCC 314
52 (1963) 1 All NLR 365
The words uttered to the defendant pursuant to which a defendant confesses matters to a very large extent in determining whether it amounts to an inducement, promise or threat. In *R v kwaghbo*[^53], it was held that the word obtained connotes a demand and a statement made by an accused on demand by the police officer cannot be said to have been voluntarily made and that the demand for the statement wholly dissipated the effect of the caution administered by the caution. That the Statement of the police constable who took the statement of the police and in court spoke of having obtained it from him and that the accused Agreed to make it after being cautioned were strong indication that the accused have been induced into making the statement and was therefore held to be involuntary and excluded. The same reason was held by the Supreme Court against the statement of the IPO (PW3) who sought to tender in evidence the statement he claimed he obtained from the accused in *State v Salawu*.[^54] It was held that the word obtain connotes a demand and a statement made by an accused on demand by the police officer cannot be said to have been voluntarily made and that the demand for the statement wholly dissipated the effect of the caution administered by the police. It was held that a statement to an accused person to cooperate so he will not be prosecuted or at least be made a prosecution witness was enough to constitute an inducement making the confessional statement inadmissible[^55]. More so also, the Supreme Court has also held that where a confessional statement was made as a result of questions and answer session between the accused and the investigating police officer, such a statement is involuntary and inadmissible[^56]. In this case, the statement of the accused was recorded by the IPO (PW.7) through a questions and answer session based on questions already prepared by the superior police officer for the accused.

The Supreme Court has however held in the case of *State v Jimoh Salawu*[^57] that it is not in all cases where a confessional statement was obtained through a question and answer session that the statement would be inadmissible. Distinguishing this case from *Namsoh’s case*, the Court held that there was no evidence of the specific questions asked by the PWI in response to which the admissions in the confessional statements were made nor was there evidence that the facts constituting the admissions in the said statement were prompted by questions from the PWI. Thus the decision in *Jimoh Salawu’s case* is supported by section 31 of the Evidence Act, 2011 which states that a confession does not become irrelevant merely because it was made in answer to questions which the defendant need not have answered.

(iv). **Other Considerations Affecting Reliability of Confession** - At the trial within trial, a trial judge might need to base reliability and admissibility of a confession on other unspecified factors such as: (a) whether or not the confession was retracted at the earliest opportunity before a Senior Police Officer or in a second statement; (b) the nature of incriminating evidence disclosed to the defendant by the police before making the confession; (c) the contents of the confessional statement in relation to the defendant’s level of literacy and means of livelihood; (d) the pattern, consistency or flow of the sentences of the confessional statement and whether in response to any prompting from the police during interrogation etc[^58]. The instances of what could determine admissibility based on reliability are never closed at all[^59].

[^53]: (1961) I All NLR 330
[^54]: (2011)8 NWLR (Pt.1279) 580. See also *R v Viaibong* (1961) NNLR 47
[^55]: See *Dairo V FRN* (2012) 16 NWLR (p.1325) 129
[^56]: See *Namsoh V State* (1983) 5NWLR(Pt.292) 129. See also *Afolahan V State* (Supra)
[^57]: (Supra)
[^58]: See *Namsoh v the State* (Supra)
3. Questions and Answers posed on Admissibility and Conviction based on Confessional Statements

Having explicitly analysed the position of the law as far as admissibility of confessional statements are concerned, it behoves us to serially answer the questions posed above in this paper as follows:

On the first question on whether a court can legally and ought to convict an accused upon his confession to a crime simpliciter without being in contravention of the requirement of the constitution that every person charged with a criminal offence shall be presumed to be innocent until he is proved guilty? The answer is that a court can convict based on a confessional statement that meets the above analyzed conditions or standard and the constitutional requirement of proof beyond reasonable doubt would have been met. In other words, the summary of what we have already analyzed above is that such a confession upon which a court can convict must be positive, direct and unequivocal, it must either be oral or written, and must have been made at any time after the commission of the crime alleged. Furthermore, it must be relevant and voluntary and above all, It must have been made in compliance with the judges Rules otherwise it will be inadmissible talk less of been used to convict.

On the second question of whether admissibility of a confessional statement can only be rejected on the two grounds of non-compliance with the Judges Rules and not having been verified and endorsed by a Superior Police Officer cumulatively? The answer is that while compliance with the Judges Rules is mandatory and its non-compliance renders a confessional statement inadmissible and upon which a conviction may not be based, the same is not true with non-verification and non-endorsement of a confessional statement by a Superior Police Officer. This is because the Supreme Court has held that where the Senior Police Officers’ practice of verifying and endorsing a confessional statement is not observed, its failure may only reduce the weight which normally attaches to any such statement proved to have been made voluntarily but does not make such confessional statement inadmissible. Therefore while the two non-compliances need not be cumulative before a confessional statement is made inadmissible, the Judges Rule is mandatory while the counter-signing by a Superior Police Officer is not mandatory as a conviction can be based on a confessional statement that is not so counter-signed by a Superior Police Officer.

On the third question on what is the effect on admissibility, if a confessional statement only complies with the Judges Rules to the neglect of being verified or endorsed by a Superior Police Officer? The answer to this question has almost been provided in the answer to the second question. Specifically however, a confessional statement that is only compliant with the Judges Rules simpliciter without more is admissible and may ground a conviction if all the conditions stated in answer to question one above are met. The Supreme Court has held that the practice of endorsement or counter-signing of a confessional statement by a Superior Police Officer is not a requirement of the law and so its non-observance does not make a confessional statement inadmissible.

On the fourth and final question on what is the effect on admissibility, if a confessional statement is only verified and endorsed by a Superior Police Officer without having complied with the Judges Rules? A deductive reading of the above questions two and three and their answers have constructively answered this
fourth question. But specifically however, such a confessional statement that is only verified and endorsed or counter-signed before a Superior Police Officer without having complied with the Judges Rules is inadmissible in evidence and cannot ground a conviction. This is because though Judges Rules are purely administrative directives and do not have the force of law, the Supreme Court has held that a confession which contravenes any of the Rules applicable in the Northern Nigerian States operating the Penal Code Laws and the Criminal Procedure Code Laws will not be admissible.

Having dealt with the issue of confession and the related issue of admissibility of confessional statement in its different facets, it behoves us to now discuss the concept of evidence and some related issues around which admissibility of confessional statements are hinged for a thorough understanding of our subject of discourse. These include the following:

4. The Concept of Evidence and Related Issues of Admissibility of Confessional Statements

Evidence: Although the word ‘Evidence’ as a procedural or adjectival, unlike substantive law is not capable of exact definition. This is because in substantive law, the legal rules are well established and visible while procedural laws are not based on any concise certainty as the rules are objects of contest between parties in a trial. Thus evidence fluctuates in its application while its scope is too encompassing leading some authors to avoid definition of evidence altogether. However, Phipson defines evidence as the testimony, whether oral, documentary or real which may be legally received in order to prove or disprove some facts in dispute. The four important components of evidence are contained in this definition. These are: Firstly, evidence has to do with testimony on oaths in court. Secondly, such testimony could either be oral, documentary or real as the three major means of proof. Thirdly, that such testimony must be legally admissible and finally, such testimony is admissible in order to prove or disprove a fact in issue. Notwithstanding that Phipson’s definition of evidence is limited in scope and application especially as it excludes the exclusionary rules of evidence; it is no doubt very resourceful. In a much narrower conception, Cross defines evidence as consisting of testimony, hearsay documents, things and facts which a count will accept as evidence of the fact in a given case. This definition no doubts suffers similar limitation as Phipson’s definition. Aguda in his book of Evidence, defines judicial evidence as the means by which facts are proved, but excludes inferences and arguments. Nwadialo on his part, defines judicial evidence as consisting of: (i) facts which are legally admissible and (ii) the legal means of attempting to prove, such facts. See similar definition also by Nokes. Oputa JSC (as he then was) from the Judicial angle, seeing evidence as the means of establishing a matter of facts, said:

If a thing is self evident, It does not require evidence. What therefore is evidence? Simply put, it is the means by which any matter of fact the truth of which is submitted to investigation may be established or disproved. Evidence is therefore necessary to prove or disprove an issue of facts.

65 R v Viosin (Supra)
66 Ozaki v State (Supra)
67 See Amupitan, Op. cit., at P.1
73 Per Oputa JSC (as he then was) in Akinda v Solano (1986) 4 S.C 141 at 184.
This definition more or less perceives evidence from the limited point of view of testing the truth of an allegation of facts. Amupitan in giving a working definition from the perspective of the scope rather than the theoretical viewpoint says:

Evidence is an art or process which describes how relevant facts are proved including facts that are excluded by law as well as facts which the law dispenses with the proof but excluding arguments, prayers, legal conclusion and judgment. However, the judgment of a court of law as well as addresses of counsel and prayers may be relevant fact in a subsequent proceeding, for instance for the purpose of estoppel and may therefore be admissible.

The summary of all the above therefore is that evidence is the means by which the existence or non-existence of any fact is proved.

Admissibility of Evidence: A large amount of evidence will expectedly be presented before the trial court during the examination of witnesses called by the prosecution and the defense. However, not all such evidence can be relied upon to prove the existence or non-existence of facts because trial courts and appeal courts must rely upon admissible evidence alone. This principle was said by the Supreme Court as follows:

There is no doubt however that a court is expected in all proceeding before it to admit and act only on evidence which is admissible in law (i.e under the Evidence Act or any other law or enactment relevant in any particular case) and so if the court should inadvertently admit inadmissible evidence, it has a duty generally not to act upon it.

When the witness to any party presents inadmissible evidence at the trial, it is the duty of the adverse party to challenge the admissibility of such evidence. In criminal cases however, counsel cannot consent to inadmissible evidence and the failure to challenge the admissibility of evidence cannot make it admissible. The trial court has a duty to reject inadmissible evidence and must refuse to admit and act on it. This is the same way an appellate court has a duty to reject on appeal to it, inadmissible evidence wrongfully admitted by a trial court. Admissible evidence is therefore evidence which has passed the test of admissibility under the Evidence Act.

Relevance of Evidence: This is the test of admissibility and the connection between relevance and admissibility is the cornerstone of the law of evidence. Where facts are stated by the Evidence Act to be relevant, the evidence in proof of those facts is admissible evidence. Conversely, where facts are stated to be irrelevant or not stated to be relevant, then evidence in proof of those facts is inadmissible evidence. Judicial confirmation of the connection between relevance and admissibility as a cardinal rule of our law of evidence can be found in the Supreme Court decision of Agunbiade v Sasegbon where the court said: ‘Admissible evidence under the Evidence Act is evidence which is relevant and it should be borne in mind that what is not relevant is not admissible.’ There are however, exceptions to the general rule that relevance is the determinant of admissibility because evidence of relevant facts may still be inadmissible

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74 Amupitan, op.cit.
75 Ibid at p.6
76 Per Idigbe JSC (as he then was) in Olukade v Alade (1976) ANLR 56 at 61
77 Olukade v Alade (Supra), Fawehinmi v NBA(1989) ANLR 274
78 See for instance SS.1,9 and 215(2) E.A, 2011
79 (1968)NSCC 147
80 Ibid per Coker JSC at 150. See also Sadau v State (Supra)
under any of the exclusionary rules of the Evidence Act. Example of which includes hearsay evidence\(^81\), involuntary confession\(^82\), evidence obtained improperly or in contravention of law\(^83\) etc. The correct description of admissible evidence should therefore be evidence of any fact in issue or relevant fact unless excluded by any other rules of evidence.

**Probative Value of Evidence:** It has already been asserted that admissibility is based on relevance and that evidence is admissible to prove the existence or non-existence of every fact in issue and any other fact declared to be relevant by the provisions of the Evidence Act. However, evidence of relevant facts may still be inadmissible if caught by any of the exclusionary provisions of the Evidence Act\(^84\). Before any evidence can be relied upon to prove the existence of any fact however; it must scale the hurdles of credibility and veracity. When evidence scales the tests of credibility and veracity, then it has weight or probative value. This in essence, is why counsel to the adverse party conducts cross-examination and subject the witness to questions to tests the credibility of the witness and the veracity of the evidence\(^85\). The Supreme Court clearly emphasized the difference and interrelationship between the credibility of a witness and the veracity of an evidence in the case of *Ghafe v Ghafe*\(^86\) when it held:

> In law, it is necessary to appreciate or note that there is a clear distinction between the questions whether evidence is admissible and the question of its probative value or weight to be attached to it. The fact that evidence oral or documentary is admissible does not mean that it has weight. It may not have any probative value or any weight at all though admissible\(^87\).

Thus admissible evidence in proof of relevant facts must be presented by a credible witness and the evidence of the witness must be consistent with the other facts of the case. For instance in respect of voluntary confession, the Supreme Court has pointed out that voluntariness is only a test of admissibility and that it is not an absolute test of truth\(^88\) and that a free and voluntary confession alone properly taken, tendered and admitted and proved to be true is sufficient to support a conviction if it satisfies the six tests enumerated in *R v Sykes*\(^89\).

The six tests are:

1. Is there anything outside it to show that it is true?
2. Is it corroborated?
3. Are the facts stated therein true so far as they can be tested?
4. Had the accused the opportunity of committing the offence?
5. Is the accused confession possible?
6. Is the confession consistent with other facts which have been ascertained and proved?\(^90\)

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81 See S.37 E.A.2011  
82 Ibid at S.29 (2) (a) (b)  
83 Ibid at Ss.1, 14 and 15  
84 Ibid at SS.1, 14,15,29(2) and 37  
85 Ibid at S.223  
86 (1999) NWLR (Pt. 455) 417  
87 Per Adio JSC in *Ghafe v Ghafe* (Supra) at 428. See also *Ozoemena v The State* (1999) NWLR (Pt.571) 632 at 649.  
88 See *Dawas& or v State* (1980)8-11 SC 236 at 258-259, *Jimoh- Dave v State*(2012) 3NWLR (Pt.1286) 144  
89(1913) 8 Cr. App R 233.  
90 See the Supreme Court also in *Osho v State* (2012) 8 NWLR (Pt.1302) 243 at 282
Thus the tendency of the police and the prosecutor relaxing after a suspect has made a confessional statement is highly condemnable as this is just the first step of due or diligent prosecution. There is still the odious task of proving that the confessional statement, apart from being voluntary is also true. Therefore after having taken a confessional statement, the police should investigate facts contained therein and the prosecution proves those facts at the trial. If they are not investigated by the police, it will be a very difficult task to prove at the trial. The evidence of things discovered in consequence of a confessional statement, must be adduced at the trial to prove the confession. This position was well amplified by the Supreme Court in *Queen v Obasa* as follows: ‘The court will like the police witnesses in this case as well as other members of the police, to bear in mind that they have a duty to test the truth of the facts stated in a confession as far as they can and should not rest satisfied when it is made’.

5. Conclusion and Recommendations
The focus of this paper, being admissibility of confessional statement, which the Evidence Act says may be given in evidence against its maker in so far as it is relevant and not excluded by the court has been examined. The discussion has taken the form of examination of the meaning and conditions for admissibility of confessions particularly subjecting it to the hurdles of Judges Rules and the further practice of verifying and endorsing same by a Superior Police Officer. The evidential implication of compliance or not with these requirements has been examined. Also, a discourse of the concept of evidence and other related issues to it such as probative value of evidence have been undertaken. The rules of admissibility of confessional statement as well as relevant questions emanating therefrom and their answers have also been undertaken. Fundamentally also, the paper has discussed the challenges of admitting confessional statements in evidence with little or no probative value upon which conviction may not be secured because of some inherent problems with the police and the prosecution in obtaining, investigating and proving such evidence. These and other challenges impeding the police investigative and prosecutorial powers have caused and capable of causing more colossal losses for the prosecution and the nation at large in terms of set back to the fight against corruption and financial crimes. Some recommendations as remedies to these identified challenges are offered thus:

All the stake-holders in the administration of Nigerian criminal justice system especially the police, lawyers, judges etc should be made to be undergoing continuous on the job improvement training courses so as to enhance their capacity to deliver effectively, quality services. This could make the judges in particular to be more proactive in the application of relevant and applicable laws, instruments or rules. The Judges Rules should be widened in scope to include the making and taking of confessional statements made by a suspect before a Magistrate for confirmation mandatory rather that the present non-mandatory system of taking such statements before a Superior Police Officer. The laws relating to recording and admissibility of confessional statements in all the states of the federation of Nigeria should be amended and revolutionized in line with the provisions of the Administration of Criminal Justice Act, 2015 so as to make such rules more realistic and to take cognizance of the Nigerian peculiar local circumstances of the high level of poverty and illiteracy causing high rate of crimes. The unfriendly law enforcement agents in most cases who capitalize on the high rate of illiterate and poor citizens to force suspects to confess to alleged crimes, calls for the inevitability of electronic or video recording of confessional statements or in the absence that, there must be a legal practitioner present during such recordings. No confessional statement should be received and made admissible in evidence if it appears from examination of the circumstances in

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91 See Amupitan, Op. cit., at 363
92 (1962) 1 All NLR (Pt. IV) 651
93 Ibid at 657. See also *Effiong v the State* (1998) 8NWLR (Pt.562) 362.
which it was made that there was any realistic danger that it might be untrue. Exclusion of such evidence
\textit{suo motu} by the courts can save the court the rigors of trial within trial and eventually save the courts the
expenses and rigors of prolonged litigation with the attendant consequences of prison congestion. The
police and all other investigative and prosecutorial Agencies should be conscious always of the fact that
securing a confessional statement is just a first step of due and diligent prosecution while the odious task of
proving that the confessional statement, apart from being voluntary, is also true, is still awaiting them ahead
at the trial. They should therefore diligently investigate and prove the facts contained in the confessions at
the trial through credible witnesses. This is because it is only when a confessional statement passes the
hurdles of credibility and veracity that it can only attract weight. Such evidence must also have been
corroborated, believable and tested as true. All these go beyond the accused’s mere confessions. It is hoped
that the implementation of these recommendations will go a long way in improving the administration of
Nigerian criminal justice system especially in the area of admissibility and treatment of confessional
statements.