

1962

Rogers v. Richmond, 365 U.S. 534 (1961)

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Recommended Citation

Richard J. Andriolo, *Rogers v. Richmond*, 365 U.S. 534 (1961), 23 Mont. L. Rev. (1961).

Available at: <https://scholarship.law.umt.edu/mlr/vol23/iss2/7>

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IN DETERMINING WHETHER A CONFESSION WAS VOLUNTARY AND THEREFORE ADMISSIBLE IN EVIDENCE THE USE OF A STANDARD THAT TAKES INTO ACCOUNT THE CIRCUMSTANCES OF PROBABLE TRUTH OR FALSITY VIOLATES THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT—Petitioner was arrested on charges of committing attempted robbery and other crimes. Thereafter he was transported without court order from jail to the office of the State's Attorney where he was questioned throughout the afternoon and evening about a murder. Petitioner confessed to the murder when informed that his wife was to be taken into custody. The test applied by the trial court to determine the voluntariness of the confession was whether the conduct of the states' law enforcement officials had been such as to induce the petitioner to confess falsely that he had committed the crime. The confession was held to have been voluntary. On appeal the Supreme Court of Errors of Connecticut applied the same test and held that the confession was true and hence voluntary. Petitioner then sought a federal writ of habeas corpus, on the principle ground that since the confession was secured under circumstances rendering it constitutionally inadmissible, he was denied due process of law under the Fourteenth Amendment. The United States District Court for the District of Connecticut held that the confession was involuntary and set aside the conviction. On appeal the United States Court of Appeals for the Second Circuit vacated the District Court's judgment on procedural grounds. The United States Supreme Court denied certiorari. On remand the District Court dismissed the writ. The judgment was affirmed by the Circuit Court of Appeals. On certiorari to the Supreme Court of the United States, *held*, reversed. The Connecticut trial court in admitting the confession as voluntary, and the Supreme Court of Errors in affirming the conviction, failed to apply the standard demanded by the Due Process Clause of the Fourteenth Amendment for determining the admissibility of a confession. *Rogers v. Richmond*, 365 U.S. 534 (1961) (Mr. Justice Stewart, with whom Mr. Justice Clark joined, dissenting).¹

The Court pointed out that its decisions under the Fourteenth Amendment have made it clear that convictions following the admission into evidence of involuntary confessions, *i.e.*, confessions which are the product of *coercion*, either physical or psychological, cannot stand.² And then it stated:

This is so not because such confessions are unlikely to be true but because the methods used to extract them offend an underlying principle in the enforcement of our criminal law: that ours is an *accusatorial* and not an *inquisitorial* system—a system in which the State must establish guilt by evidence independently and freely

¹The dissenting judge agreed with the majority of the court in holding that any consideration of the element of *reliability* was constitutionally precluded in determining whether or not a confession was voluntary. But they felt that the petitioner was not entitled to relief by way of a federal writ of habeas corpus merely because the state failed to apply the proper test of admissibility. They felt that the writ could only be granted if the petitioner was in fact in custody in violation of the Constitution and laws of the United States. In their judgment the case should have been remanded to the District Court which by applying the proper test could determine whether the confession was involuntary and the petitioner was being held in violation of the Constitution and laws of the United States. The issuance of the writ would depend on the trial court's decision on this issue. Instant case at 549.

²Instant case at 540.

secured and may not by coercion prove its charge against an accused out of his own mouth.⁸ (Emphasis supplied.)

Thus, even if a confession is clearly reliable, it is inadmissible if the will of the defendant has been overcome and his capacity for self-determination critically impaired.⁴ Consideration of the element of *reliability* is constitutionally precluded because it cannot be determined what weight the trial judge placed on that element.⁶ If the confession is clearly reliable, the judge may interpret, construe, and relate facts in such a manner as to emphasize those facts which tend to show that the confession was voluntary and de-emphasize those facts which tend to show that the confession was involuntary. But if he feels that the confession is unreliable his emphasis may be just the opposite.

The test which the Supreme Court of the United States holds should be applied to determine whether a confession is voluntary is:

[W]hether the behavior of the State's law enforcement officials was such as to overbear petitioner's will to resist and bring about confessions not freely self-determined—a question to be answered with complete disregard of whether or not petitioner in fact spoke the truth.⁹

The Connecticut courts applied the following test: Were the circumstances under which the statement of the defendant was given such as to procure an untrue, hence involuntary, statement? This test would sanction all methods of procuring confessions by allowing the admission into evidence of all "true" confessions, no matter how obtained.

The test required by the Supreme Court of the United States in the instant case and the one applied by the Connecticut courts are diametrically opposed—the latter requires complete reliance on truth while the former forbids any reliance on truth. But it must be noted that the Supreme Court of the United States found evidence of psychological coercion⁸ whereas the trial court found only the employment of artifice or deception.⁹ It has long been recognized that the use of artifice, trickery, or fraud, however reprehensible, in inducing a confession will not *alone* render the confession inadmissible.¹⁰ Such confessions are basically different from those induced by duress or promise, "for when one is tricked into making an incriminating statement there is no temptation to admit falsehoods in order to ward off a threatened danger or to obtain a promised reward."¹¹ These basically

⁸*Id.* at 540-41.

⁴*Culombe v. Connecticut*, 367 U.S. 568 (1961). "The line of distinction is that at which governing self-direction is lost and compulsion, of whatever nature or however infused, propels or helps to propel the confession." 367 U.S. at 602.

⁶Instant case at 545.

⁹*Id.* at 544.

⁷*State v. Rogers*, 143 Conn. 167, 120 A.2d 409 (1956).

⁶The court does not specify this, but a reading of the opinion clearly shows that this is what they are holding.

⁹The Connecticut trial judge instructed the jury, *inter alia*, that: "The fact that a confession was procured by the employment of some artifice or deception does not exclude the confession if . . . the artifice or deception was not calculated to procure an untrue statement." Instant case at 542.

¹⁰20 Am. Jur. *Evidence* § 519 (1939) ; 3 Wigmore *Evidence* § 841 (3rd ed. 1940).

¹¹20 Am. Jur. *Evidence* § 519 (1939).

different findings could very well have been the reason for the two different tests. In fact the Supreme Court of the United States stresses that in the instant case it does not deal with a factual situation where, taking all of the evidence in the light most favorable to the defendant, there is still no evidence of coercion.¹² Therefore, the decision in the instant case does not preclude consideration of the element of reliability in determining whether a confession obtained by *only* trick, artifice, or fraud is admissible in evidence because in such a case there is no coercion.¹³

Although the distinction between trick and coercion was recognized by the trial court,¹⁴ the Supreme Court of Errors of Connecticut did not discuss it.¹⁵ The Montana Supreme Court has also failed to make this distinction between trick and coercion and has applied a test taking into consideration the element of reliability in both situations.

The Montana courts, in determining whether a confession is voluntary, apply the following test: "Was the inducement held out to the accused such as that there is any *fair risk of a false confession?*"¹⁶ (Emphasis supplied.) This test is somewhere between the test applied by the Connecticut courts and the one required by the United States Supreme Court. In the Montana test, the reliability element is important, but not controlling. Holding that a confession is involuntary if there is a fair risk of a false confession is far different from holding that the confession is involuntary if untrue.

In *State v. Dixon*,¹⁷ the defendant confessed after officers told him that "if a person told the truth, as a rule, he got out of it a whole lot easier than he would by telling a lot of lies."¹⁸ The court held that such statements did not render the confession involuntary. The worst that such statements could invoke is the truth and therefore, there is no fair risk of a false confession.¹⁹ The mere fact that an inducement has been held out does not render the confession inadmissible; the inducement must be such that there is a fair risk of a false confession.²⁰ The court then stated: "Everything in the case indicates that the defendant's confessions were true."²¹ In *State*

¹²Instant case at 548, n.5.

¹³If coercion of any form is connected with the trick or fraud, we must apply the rules as to coerced confessions.

¹⁴Note 9, *supra*.

¹⁵*State v. Rogers*, 143 Conn. 167, 120 A.2d 409 (1956).

¹⁶*State v. Sherman*, 35 Mont. 512, 522, 90 Pac. 981, 983 (1907); *State v. Rossell*, 113 Mont. 457, 465, 127 P.2d 379, 382 (1942); *State v. Roebuck*, 126 Mont. 302, 309, 248 P.2d 817, 820 (1952); *State v. Dixon*, 80 Mont. 181, 198, 260 Pac. 138, 144 (1927); *State v. Hoffman*, 94 Mont. 573, 582, 23 P.2d 972, 974 (1933); *State v. Nelson*, 362 P.2d 224, 230 (Mont. 1961).

"[T]he object of the rule is not to exclude a confession of the truth, but to avoid the possibility of a confession of guilt from one who is in fact innocent." *State v. Sherman*, 35 Mont. at 522, 90 Pac. 983. The *Sherman* case recognized, however, that in certain cases even a confession of the truth must be excluded: ". . . if the circumstances are such as that the prospect of bettering his situation by speaking even falsely would appeal to the confussing party as a reasonable person, as the better alternative to remaining quiet, then the confession ought not to be received." *Id.* at 520, 90 Pac. at 983.

¹⁷80 Mont. 181, 260 Pac. 138 (1927).

¹⁸*Id.* at 197, 260 Pac. at 144.

¹⁹This is a paraphrase of a quotation from 2 WIGMORE *Evidence* § 832 (2nd ed. 1923) which was quoted by the court. *State v. Dixon*, 80 Mont. 181, 199, 260 Pac. 138, 145 (1927).

²⁰Note 17, *supra*.

²¹80 Mont. at 201, 260 Pac. at 146.

v. Rossell,²² the defendant, who was convicted of grand larceny for the theft of a cow, confessed after officers informed him that there was no bill of sale for the cow that he had sold. This statement was untrue. Defendant contended that the statement had led him to believe that his principal defense (claim of ownership) was lost, and that the statement had thereby *tricked* him into giving an involuntary confession. The court applied the Montana test and held that the trial court did not err in admitting the confession, especially in view of the fact that the evidence produced by the state was consistent with the statements made by the defendant. Thus, although in both cases it appears that the confessions were voluntary even under the rule laid down by the Supreme Court of the United States in the instant case, there can be little doubt that the court relied on the reliability of the confessions in determining that the conduct of the law enforcement officials was not such as to cause a fair risk of a false confession.²³

In *State v. Nelson*,²⁴ a case of special interest, the defendant confessed to the crime of murder, but later contended that the confessions were involuntary because the sheriff had forcefully suggested some of the words contained in the confession. Defendant further contended that he was deprived of the counsel of friends and family in such a manner as to render his confession involuntary. The court held that the confessions were voluntary and admitted them. It is evident that some coercion was present. While there may not have been such coercion as to result in any fair risk of a *false* confession, the conduct of the law enforcement officials might have been such as to overbear the defendant's will to resist and bring about a confession not freely self-determined.

Two Montana cases at first glance appear to change the Montana test. In *State v. Crighton*,²⁵ which was followed in *State v. Duran*,²⁶ the court quoted the following passage from 16 C.J. 717:²⁷

A confession of guilt by an accused is admissible against him when and only when, it was freely and voluntary made without having been induced by the expectation of any promised benefit nor by the fear of any threatened injury.

This test is not objectionable under the Due Process Clause of the Fourteenth Amendment. But it is doubtful that the court intended to depart from the test stated in its earlier cases. In the *Crighton* case the court referred to *State v. Dixson*²⁸ and *State v. Hoffman*,²⁹ both of which follow the Montana test, when stating that a confession must be shown to have been voluntary before it is admissible, and then it quoted the rule set out above as being an excellent summary of the authorities on the subject that a con-

²²113 Mont. 457, 127 P.2d 379 (1942).

²³In *State v. Roebuck*, 126 Mont. 302, 248 P.2d 817 (1952), the defendant confessed after her accomplice, who had already confessed, was induced by officers to attempt to induce the defendant to confess. Defendant's accomplice told her to sign the confession and that it would probably go a lot easier on her if she did. The court held that there was no such inducement as might result in a false confession.

²⁴362 P. 2d. 224 (Mont. 1961).

²⁵97 Mont. 387. 34 P.2d 1951 (1953).

²⁶127 Mont. 233, 259 P.2d 1951 (1953).

²⁷A misprint in the official Montana Reports cites 15 C.J. instead of 16 C.J.

²⁸Note 17, *supra*.

²⁹94 Mont. 573, 23 P.2d 972 (1933).

fession must be voluntary to be admissible. Thus, the court did not intend to establish a new test for determining whether a confession was voluntary, but was merely summarizing the authorities that hold that a confession must be voluntary to be admissible. The confession in the *Crighton* case was held inadmissible on the ground that the state had not laid a foundation as to the voluntariness of the confession.

However, the court in the *Duran* case held that a confession was inadmissible by applying the rule stated in the passage which the court had quoted from *Corpus Juris* in the *Crighton* case. Thus although the court in the *Crighton* case did not intend this passage to be used as a test to determine whether a confession was voluntary, it became such a test in the *Duran* case. But in the period between the *Crighton* and *Duran* cases the court had applied the Montana test and in the cases following the *Duran* case the court has continued to apply the Montana test.

The Montana supreme court, in all of the preceding cases except the *Rossell* case, was dealing with coercion. Yet in all of these cases, with the possible exception of the *Duran* case, the court applied a test which had as one of its fundamental elements the consideration of the reliability of the confession. The court never discussed the distinction between trick and coercion. But the court cannot be criticized for failing to make this distinction because until the decision in the instant case there was no need to make such a distinction. The Montana test was well suited to either situation when the consideration of the element of reliability was not precluded.

The present Montana test to be used in determining whether a confession is voluntary where there is coercion present violates the Due Process Clause of the Fourteenth Amendment. Although the test does not say that a confession is voluntary if true, as did the Connecticut test as applied to coerced confessions by the Supreme Court of Errors of Connecticut, it does place emphasis on the reliability of the confession in determining whether there is any fair risk of a false confession. Such emphasis is not permissible inasmuch as it is impossible to determine to what extent the consideration of the reliability element has influenced the judge in determining what constitutes a fair risk of a false confession.

Allowing consideration of the reliability of a confession which is obtained by trick or fraud is largely of only academic value because from the very definition of what constitutes a confession obtained by trick or fraud there can be no temptation to admit a falsehood and such a confession would readily be admissible under the test laid down by the Supreme Court of the United States in the instant case. If there is coercion connected with the trick then the test of the instant case would have to be applied.

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