Volume 81 | Issue 1 Article 6

September 1978

The Right to an In Camera Voluntariness Hearing: State v. Sanders

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CASE COMMENTS

THE RIGHT TO AN *IN CAMERA* VOLUNTARINESS HEARING: *State v. Sanders*

Under the early common law, all statements of guilt were admissible as evidence regardless of the circumstances under which they were secured.[1] By the 1800's, however, the principle of exclusion had developed and the West Virginia rule has always been that a confession or inculpatory statement by a person accused of a crime is inadmissible in evidence if not freely and voluntarily made.[2] Therefore, when the prosecution wishes to introduce a statement allegedly made by the defendant and amounting to an admission of part or all of the offense with which he is charged, in most circumstances a hearing must first be held out of the presence of the jury to determine its voluntariness.[3] The duty of the court to hold an *in camera* hearing is mandatory, and failure to do so constitutes reversible error.[4]

In the past, this requirement has been limited to situations where the confession was made to police officers or other persons in authority while the defendant was in custody or undergoing interrogation.[5] This limitation is directly connected with the fac-

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[1] 3 J. WIGMORE, EVIDENCE §§ 817-20 (Chadbourn rev. 1970).

[2] The first West Virginia case stating this proposition is State v. Morgan, 35 W. Va. 260, 13 S.E. 385 (1891). The case notes that it is also a well-settled rule in Virginia.

[3] State v. Smith, 212 S.E.2d 759 (W. Va. 1975); Spaulding v. Warden, 212 S.E.2d 619 (W. Va. 1975); State v. Fortner, 150 W. Va. 571, 148 S.E.2d 669 (1966).

[4] State v. Fortner, 150 W. Va. 571, 579, 148 S.E.2d 669, 674 (1966).

[5] Wilhelm v. Whyte, 239 S.E.2d 735 (W. Va. 1977); State v. Johnson, 226 S.E.2d 442 (W. Va. 1976) (holding that a spontaneous statement made prior to any police action or interrogation may be admitted into evidence without its voluntariness first having been determined in an *in camera* hearing. In *Johnson,* the defendant exclaimed, "I shot him, Gary," to a deputy sheriff called to the scene shortly after the shooting. The court found that under the circumstances of this case—the statement was made before there was any arrest, custodial supervision or police interrogation of any kind, the defendant considered the particular deputy a friend, and there was no objection to the introduction of the statement—the evidence showed that the statement was spontaneous and the reasons for holding a hearing to determine voluntariness did not apply. The court did find, however, that the trial court committed reversible error by failing to conduct a voluntariness hearing with respect to later statements made by the defendant; these statements were made while the defendant was being driven to the hospital by another deputy sheriff, after he had been advised of his rights); State v. Vance, 146 W. Va. 925, 124 S.E.2d 252

tors that led to the formation of the rule. First, it became evident that persons, through hope or fear, would confess to crimes which had not been committed or had been committed by someone else. Since the justification for permitting the admission of extrajudicial confessions is based upon the assumption that people will not confess to crimes they did not commit, the requirement that the statement be made voluntarily, without threats or inducement, developed to maintain the trustworthiness of the evidence presented to the jury.[6]

Second, the use of an involuntary confession would be a violation of both the West Virginia Constitution and the United States Constitution, which provide that a person in a criminal case shall not be compelled to be a witness against himself.[7] Since these factors were of concern only where the confession was made to one in authority, the rule until *State v. Sanders*[8] has been that to exclude a confession, it must not only be made under inducement of favor or fear, but such inducement must come from one in authority.[9]

The court in *State v. Sanders* greatly expanded the right to an *in camera* voluntariness hearing. It held that the primary purpose of the hearing is to determine whether the confession was voluntary, rather than to deter, discover, or punish undesirable police conduct; therefore, the right to such a hearing does not depend upon the identity of the party to whom the admission is made.[10]

The defendant in *Sanders* shot and killed her husband as he entered their home. She was taken into custody by the police, who took her to the West Virginia University Medical Center where she

(1962); State v. Brady, 104 W. Va. 523, 140 S.E. 546 (1927); State v. Morgan, 35 W. Va. 260, 13 S.E. 385 (1891) (holding that inculpatory statements uttered by the defendant, apparently in her sleep and heard by another woman sleeping in the same bed, need not be shown to be voluntary before being admitted into evidence; but that a confession to a detective, made under promises of aid, was the proper subject of a hearing by the court to determine its admissibility. Since the detective was a private detective, not working in connection with the police, the inducement did not come from one in authority, and therefore the trial court properly admitted the confession into evidence).

[6] State v. Fortner, 150 W. Va. 571, 578, 148 S.E.2d 669, 674 (1966).

[7] W. VA. CONST. art. III, § 5; U.S. CONST. amend. V.

[8] 242 S.E.2d 554 (W. Va. 1978).

[9] State v. Morgan, 35 W. Va. 260, 267, 13 S.E. 385, 387 (1891).

[10] 242 S.E.2d at 556-57.

was examined and treated.[11] Shortly thereafter, a friend of the defendant visited her in the hospital. During her visit, the defendant made some incriminating remarks.[12] At the trial, the defendant, whose sole defense was insanity, requested an *in camera* hearing to determine the voluntariness of her statements. The trial court refused the motion, and the witness was permitted to relate the conversation to the jury. The supreme court reversed, holding that an *in camera* hearing is required regardless of the recipient's identity.

The court's holding in *Sanders* appears to expand the requirement of an *in camera* hearing in other directions as well. The recent holdings in *State v. Johnson*[13] and *Wilhelm v. Whyte*[14] appear to be implicitly overruled by the present case. In these decisions, the court held that a spontaneous statement to a police officer, before any accusation, arrest or custodial interrogation has been undertaken, may be admitted into evidence without first holding an *in camera* hearing to determine its voluntariness. It seems unlikely that *in camera* hearings would still not be required for spontaneous statements to police officers when *State v. Sanders* now requires hearings for spontaneous statements made to personal friends.

Because of the contradictions between the court's treatment of the spontaneous remarks in *Sanders* and in *Johnson* and *Wilhelm,* it seems plausible that the court may limit *Sanders* in the future, and not require an *in camera* voluntariness hearing for every confession, regardless of the circumstances under which it

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[11] The defendant was treated by four doctors whom she told she had tried to commit suicide by swallowing twenty-five Valium tablets. The defendant was also seen by the staff psychiatrist who diagnosed her as suicidally depressed and mentally ill.

[12] Mrs. Hall's testimony was as follows:

> She [the defendant] said that no one would forgive a murderer. . . . She went on to say that she had had twenty-five years of unhappiness. . . . She said that she had been thinking about this for some time. . . . She said that he treated me like a dog at times.

242 S.E.2d at 556 n.2.

[13] 226 S.E.2d 442 (W. Va. 1976) (discussed in note 5, *supra*).

[14] 239 S.E.2d 735 (W. Va. 1977) (The petitioner made several brief inculpatory statements to neighbors at the scene of the crime to the effect that he was responsible for the murder. He made the same type of remark to one of the deputy sheriffs as the deputy entered the mobile home, but before any arrest had been made or questions asked. The court found nothing in the record to demonstrate that the petitioner was under any threat or coercion when he made the statements, and followed the rule set forth in *Johnson*).

was made. In *Sanders,* the defendant alleged insanity as her sole defense to the shooting. This insanity defense at least raises the question whether the court was really concerned that a hearing be held to determine if her confession was *voluntary,* or that a prior determination be made under the facts of this case as to the *trustworthiness* of the confession and therefore, its admissibility as an exception to the hearsay rule.

An indication of the court's real concern in this case and the direction it will take in the future might be gained from an analysis of the authority the court cites to support its holding. In the North Carolina decision of *State v. Cooper,*[15] the defendant, while undergoing treatment in a hospital emergency room, confessed to killing his wife and four of their five children.[16] The trial court conducted a lengthy voir dire in the absence of the jury and concluded that the defendant's statements to a nurse and medical attendant were admissible into evidence.[17] In discussing whether the trial court had erred in admitting the statements, the Supreme Court of North Carolina held that *Miranda v. Arizona*[18] was inapplicable since the defendant was not in custody or under police interrogation at the time the confessions were made.[19] Nevertheless, the court said, "to be admissible in evidence against him, the confessions of the defendant to the hospital attendants must have been made voluntarily and understandingly."[20]

The court initially defines "understandingly" from the perspective of the defendant: for the confession to have been made

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[15] 286 N.C. 549, 213 S.E.2d 305 (1975).

[16] The defendant was not under arrest at the time he was receiving medical attention, nor had the murders yet been discovered. A police sergeant had noticed the defendant in the locker room of a bowling alley, apparently nervous and wearing a house slipper on one foot and a laced boot on the other; he took the defendant to the hospital for observation. *Id.* at 554-55, 213 S.E.2d at 310.

[17] The nurse recounted the following conversation with the defendant. First, the defendant asked her to call the police, telling her that something awful was wrong at his house. She asked him what he meant and he said he had destroyed his wife and children. She asked him how and he said he had beaten them. He told her:

> I was walking around like a normal man listening to the radio. Then I started dancing around like a wild man. I destroyed my family. The music gave me sensations which told me my family was people from the moon to kill me. I don't know why I did it. I don't understand.

Id. at 556-57, 213 S.E.2d at 311.

[18] 384 U.S. 436 (1966).

[19] 286 N.C. at 567, 213 S.E.2d at 317.

[20] *Id.*

understandingly, the court says, the defendant must have had the requisite mental capacity. In defining this requisite mental capacity, however, the court appeared more concerned with the trustworthiness of the statements. The requirement of the requisite mental capacity to confess is satisified if the accused is found to have sufficient mental capacity to testify. The test for this capacity to testify is the ability "to understand and to relate . . . a fact which will assist the jury in determining the truth with respect to the ultimate facts at issue."[21] The court in *Cooper* found that the defendant was capable of giving a correct account of the events relating to the deaths of his wife and children, and had made the statements confessing the murders freely, voluntarily, and understandingly.

In *Cooper,* as in *Sanders,* the defendant's state of mind was in issue. The reference to the North Carolina case by the West Virginia court supports the proposition that the court may be more concerned with the trustworthiness of the confession than with how freely it was made.

In another recent case, *State v. Hamrick,*[22] the court expressed the need for caution in admitting into evidence the confession of a defendant who lacked the mental capacity to understand the possible consequences of confessing or waiving other rights. Although the court was dealing with statements obtained during a police interrogation, and was primarily concerned that the rights set forth in *Miranda v. Arizona* be effectively extended to all defendants, *Hamrick* may give some insight into the direction the court is moving in *Sanders.* The court may be trying to assure that the confessions introduced into evidence before the jury are reliable by requiring an *in camera* hearing in situations where the defendant's mental capacity is suspect, rather than expanding this requirement to all confessions regardless of their circumstances.

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[21] *Id.*

[22] 236 S.E.2d 247 (W. Va. 1977).