Maryland Law Review

Volume 14 | Issue 2 Article 9

Constitutionality of Submitting to Jury Voluntariness of Confession when There is Other Evidence Sufficient to Convict - Stein v. People of the State of New York

CONSTITUTIONALITY OF SUBMITTING TO JURY VOLUNTARINESS OF CONFESSION WHEN THERE IS OTHER EVIDENCE SUFFICIENT TO CONVICT

Stein v. People of the State of New York[1]

At the consolidated trial of the three petitioners for felonious murder, the confessions of two, made while confined apart from each other, were admitted in evidence over objection, along with testimony of the police as to their voluntary character, and of the police doctor as to signs of violence possibly inflicted on each petitioner after arrest. There was also ample other testimony adduced upon which the jury could convict. After instruction from the trial court to consider the confessions in determining guilt only if found beyond a reasonable doubt to have been given without coercion, the jury returned a general verdict of guilty as to each petitioner. The intermediate and highest state appellate courts affirmed, and the Supreme Court granted certiorari because of the important due process questions involved.[2] The Supreme Court held, *inter alia,* in a 6-3 decision, Justice Jackson speaking for the majority, that, where the trial court upon conflicting evidence as to voluntariness, admitted the confessions before the jury with an instruction to consider them in determining guilt only if found beyond a reasonable doubt to have been given without coercion, and there was sufficient evidence apart from the confessions to sustain the convictions, such procedure and the convictions thereon by general verdict were not unconstitutional.[3]

The essence of the petitioners' contention was that upon admission of the confessions the jury should have been instructed to acquit, regardless of other evidence adduced, if the confessions were found to have been coerced[4] — not an unreasonable claim in the light of the obvious prejudicial effect of an admission by a defendant of his guilt on a jury, and in the light of the Court's holding in setting aside the conviction in *Malinski v. New York*[5] some years earlier, when it held that there was a denial of due process in the submission of a coerced confession to a jury, even though

[1] 346 U. S. 156 (1953).

[2] Petitioners in instant case argued several constitutional objections, but this casenote is concerned with only one of their contentions and the Court's holding thereon. Another facet of the decision is discussed in a companion casenote following this.

[3] This holding is not found in any one statement of the Court but is derived from several interrelated statements in the opinion.

[4] *Supra,* n. 1, 188.

[5] 324 U. S. 401 (1945).

there was ample other evidence to convict.[6] The *Malinski* doctrine had been repeated in *Haley v. Ohio*,[7] *Gallegos v. Nebraska*,[8] *Stroble v. California*,[9] and *Brown v. Allen*,[10] and a similar statement had been made in *Lyons v. Oklahoma*,[11] decided prior to the *Malinski* decision although not relied on therein.

Petitioners here attacked the constitutionality of a procedure for determining the admissibility of confessions which Wigmore considered highly improper but admitted had been adopted by a number of federal courts and some thirty state courts,[12] including Maryland.[13] This widespread practice, as followed in the instant case, was merely to instruct the jury not to consider the confessions in determining guilt if not found beyond a reasonable doubt to have been given voluntarily. Under such an instruction, the jury, in rendering its general verdict, could have rested its conclusion on a finding that the confessions had been voluntarily given and supported the conclusion of guilt, or it could have found them to have been coerced and still have convicted on the other evidence. Leaving this alternative to the jury according to petitioners, was unconstitutional.

Statements that petitioners' claim was "far-reaching" and "novel"[14] form part of the Court's reasoning that it had never before been squarely faced with this precise problem and all of its ramifications. In the *Malinski* case and the decisions repeating its doctrine the convicted defendants had not attacked the constitutionality of the procedure for the ultimate determination of whether a confession should be considered as to guilt by the jury, where there was a dispute of fact as to its voluntary character, but the constitutionality of the admission of confessions, which such defendants contended were on the undisputed facts coerced. Here the petitioners argued not only that the confessions were on the undisputed evidence coerced but that the very procedure of submitting confessions to the jury without an instruction to acquit if found coerced denied due process.

[6] *Ibid*, 404.
[7] 332 U. S. 596, 599 (1948).
[8] 342 U. S. 55, 63 (1951).
[9] 343 U. S. 181, 190 (1952).
[10] 344 U. S. 443, 475 (1953).
[11] 322 U. S. 596, 597 (n. 1) (1944).
[12] WIGMORE ON EVIDENCE (3rd ed., 1940), Sec. 861, where the author states the rule that the question of admissibility of evidence, including confessions, should always be for the court to decide, and continues: "Nevertheless, many Courts today hold that, after the judge has applied the rules and admitted the confession, the jury are to apply them again, and *by that test* may reject it." Also see note 3 to that section and the jurisdictions therein mentioned as having adopted such procedure.
[13] Smith v. State, 56 A. 2d 818, 189 Md. 596, 603-604 (1948).
[14] Stein v. People of State of New York, 346 U. S. 156, 188-189 (1953).

In determining the constitutionality of this procedure here challenged the Court recognized the disadvantages to both the Court and the petitioners in not being able to discover from the general verdict whether the jury considered or rejected the confession in convicting,[15] but decided that a procedure "so long established and widely approved by state judiciaries" should not be considered a violation of due process.[16] To arrive at this decision the Court considered the constitutional effect of the alternatives left to the jury by the instruction under this procedure.[17]

The first alternative was to find the confessions voluntarily given and upon them base convictions. Upon the record in the instant case the court perceived no constitutional error if the jury found the confessions to have been given voluntarily and based upon that finding a verdict of guilty.[18] And the Court found no constitutional error in the jury's other alternative which was to reject the confessions and convict on the other evidence.[19]

In the *Malinski* case in reversing a conviction, rendered under the same procedure here attacked, because one of the confessions in effect before the jury, though not formally admitted, was found from the undisputed evidence to have been coerced, the court's opinion, in which only three justices joined, one other concurring, stated: "And if it is introduced at the trial, the judgment of conviction will be set aside even though the evidence apart from the confession might have been sufficient to sustain the jury's verdict."[20] However, in the instant case, as mentioned above, the court found insufficient evidence of coercion in the undisputed facts to make the admission of the confessions unconstitutional. Accordingly, the petitioners pressed a more extensive question than existed in the *Malinski* case, namely, the constitutionality of the traditional procedure for determining the admissibility of confessions. The practice of leaving the ultimate question of admissibility of confessions to the jury was adopted by a great number of jurisdictions as a further protection of defendants against the use of coerced confessions. The upholding of the peti-

[15] *Ibid*, 177.
[16] *Ibid*, 179.
[17] *Ibid*.
[18] *Ibid*, 179-188. In making this finding, the Court reviewed carefully its prior holdings and present doctrines excluding confessions if obtained either by physical violence or psychological coercion. The discussion as applied to the facts, while of no significance on the problems discussed in this casenote, is of real import to the practitioner as to the sufficiency of proof of coercion in any given case.
[19] *Ibid*, 190.
[20] 324 U. S. 401, 404 (1945).

tioners' contention would require an acquittal from the jury whenever an admitted confession was found coerced, a serious matter since further prosecution would then be precluded as double jeopardy.[21] Of such a proposition the Court said: "This Court never has decided that reception of a confession into evidence, even if we held it to be coerced, requires an acquittal or discharge of a defendant."[22] The necessity of acquittal upon finding a confession coerced would make the traditional procedure and the protection it was designed to afford impracticable.[23] Therefore, the refusal to instruct the jury to acquit if the confessions were not voluntarily given was not constitutional error.[24] The *Malinski* holding and its subsequent reiterations were not binding, since its consequences, as brought to light in the instant case, "were not asserted or argued at the bar nor anticipated or approved" by any statement in those opinions.[25]

The Fourteenth Amendment, according to the Court, did not enact "a rigid exclusionary rule of evidence" but "a guarantee against conviction on inherently untrustworthy evidence".[26] It should not be the basis of setting aside a conviction if the admitted confession was untrustworthy but there was ample other trustworthy evidence to sustain a conviction.

It should be noted that the Court distinguished from this case and confirmed its earlier holdings that it would be unconstitutional to convict where coerced confessions were allowed to go to the jury along with other testimony insufficient to convict,[27] and also where the court had decided finally the admissibility of any confession and submitted it to the jury to be considered as to guilt when in fact under Supreme Court definition it was coerced.[28]

The vigorous dissents of Justices Frankfurter, Black and Douglas argued the conclusive effect of the *Malinski* doctrine and considered the majority's ruling as opening the door to more extensive use of the third degree by police authorities.[29] Justice Douglas in addition contended that the violation of a constitutional guarantee was not a mere harmless error in the proceeding, which, if not affecting

[21] *Supra*, n. 14.
[22] *Ibid.*
[23] *Ibid.*
[24] *Ibid*, 193.
[25] *Ibid*, 189.
[26] *Ibid*, 192.
[27] *Ibid*, 189-190.
[28] *Ibid*, 191-192.
[29] *Ibid*, 197-199 (Justice Black's dissent), 199-203 (Justice Frankfurter's dissent), 203-206 (Justice Douglas's dissent).

substantial rights, might be disregarded, but of such prejudice as always to amount to a denial of due process,[30] and concluded with a note that the decision here would have been otherwise if the constitutional school of thought prevailing in the late forties were still dominant.[31]

As to any change of constitutional school of thought it should be noted that in two very recent cases, one decided in 1952 and the other in early 1953, with the same membership as here the Court, speaking through justices who found with the majority here, repeated and sustained the *Malinski* doctrine.[32] But here the *Malinski* doctrine appeared in a new light, and the majority of the Court, perceiving its evil effect on a traditional procedure, cast it aside in favor of sustaining the constitutionality of that procedure.

[30] *Ibid*, 204.
[31] *Ibid*, 208, note *.
[32] Stroble v. California, 343 U. S. 181 (1952); Brown v. Allen, 344 U. S. 443 (1953).