

1956

State of Utah v. Milda Hopkins Ashdown : Petition for Rehearing

Utah Supreme Court

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J. Vernon Erickson; Attorney for Defendant and Appellant;

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IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH,

Plaintiff and Respondent

FILED

v.

JUN 8 - 1956

MILDA HOPKINS ASHDOWN,

Clerk, Supreme Court, Utah

Defendant and Appellant

Criminal #8456

PETITION FOR REHEARING

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I N D E X

Page

PETITION FOR REHEARING

1

ARGUMENT

2

Point One. The Court erred in finding that the confession was voluntary within the meaning of constitutional provisions against self incrimination and properly admissible in evidence, and that defendant's constitutional rights were not violated. **2**

Point Two. That if instruction #6 was properly given to the jury, then the jury could not have properly considered the credibility of the confession as evidence, because the trial court failed to admit all of the evidence on the question of whether the confession was voluntary, and the circumstances surrounding its being made, to the jury **8**

CASES

**Rochin v. People of Cal. supra, 342 U.S. 165,
72 S. Ct. 205**

6

State v/ Crank, 105 Utah 332, 142 P. 2nd 178

8

IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH,

Plaintiff and Respondent

v.

MILDA HOPKINS ASHDOWN,

Defendant and Appellant

Criminal #6456

PETITION FOR REHEARING

Comes now Milda Hopkins

**Ashdown, the Appellant in the above entitled cause,
and petitions this Court to grant her a rehearing
for the following reasons and upon the following
grounds:**

**1. That the Court erred in finding that the
confession was voluntary within the meaning of
constitutional provisions against self incrimina-
tion and properly admissible in evidence, and that
defendant's constitutional rights were not
violated.**

**2. That if instruction 36 was properly
given to the jury, then the jury could not have
properly considered the credibility of the
confession as evidence, because the trial court
failed to admit all of the evidence on the
question of whether the confession was voluntary,
and the circumstances surrounding its being made.**

to the Jury.

I, J. Vernon Erickson, hereby certify that I am the attorney for Milda Hopkins Ashdown, the Appellant and Petitioner for rehearing in the above entitled action; that in my opinion the foregoing petition for rehearing is meritorious and the same is not filed for the purpose of delay.

J. Vernon Erickson.

ARGUMENT

POINT ONE.

THE COURT ERRED IN FINDING THAT THE CONFESSION WAS VOLUNTARY WITHIN THE MEANING OF CONSTITUTIONAL PROVISIONS AGAINST SELF INCRIMINATION AND PROPERLY ADMISSIBLE IN EVIDENCE, AND THAT DEFENDANT'S CONSTITUTIONAL RIGHTS WERE NOT VIOLATED.

The Court, in its opinion, states that "we agree with the trial court that the confession was voluntary within the meaning of constitutional provisions against self-incrimination and properly admissible in evidence."

Counsel must still most emphatically disagree with such view. The record reveals that here we

have an overwrought, emotionally upset, uneducated woman being brought from the funeral of her husband, and being held for questioning for a period of 5½ hours on a hot day without food or rest, with her father (who requested an attorney for her) and her uncle (who did the same) being barred from the court room and prevented from rendering her any assistance, and their anxiety as to her having counsel to represent her, being allayed by the officers stating that she had an attorney who would represent her.

The interrogators didn't bother to have a reporter or stenographer present during this questioning and so there is really no official record of just when or how the accused was advised of her constitutional rights, or whether she was in any condition to understand just what her rights were. The record is clear that at least 25 minutes or one-half hour elapsed before she was so advised. A good many questions and a good many answers were

undoubtedly made in this period of time. It is stated that the Appellant talked mostly during this time about family affairs, but the record shows that she was being questioned. Sheriff Nelson testified, T. p. 73:

" Well, as I remember when I started talking to her I asked her if she had give it any more thought about where the poison might have come from that was pronounced that Ray had had or got. She said no, she didn't know anything, any more about it then she did before. I don't know whether she used them very words or not, but she intimated, she said she didn't know any more about it.

***Well, I said to Mrs. Ashdown again, that the doctor still claimed that Ray had been poisoned and we would like to find out what had happened and asked her if there was any chance she had made a mistake of any kind and put poison in that lemonjuice and thought it was salt. And she said she didn't think so. I asked her if she knew of any poison that was around the premises of any kind.

Q Sheriff, prior to asking Mrs. Ashdown if she had made a mistake, was Mrs. Ashdown informed as to whether or not she needed to answer your questions?

A I don't believe at that time. I believe it was a little later on when we advised her of her--when you advised her of her constitutional rights. I don't believe it was right on the start."

The record also shows that prior to this questioning Mrs. Ashdown was questioned by A. M. Hardsen, County Attorney, and Sheriffs Wells, Benson and Nelson, on July 5th, the date of Ashdown's death, at her home. The record is entirely silent as to her having been advised of her constitutional rights on that day. T. p. 68-69.

The Court in its opinion says "the questioning was carried on by men whom she knew and who permitted her to discuss at will her family affairs much of the time. Under these circumstances we do not feel that questioning for a period of $3\frac{1}{2}$ hours would tend to break her will or induce her to confess to a crime which she did not commit."

Counsel disagrees. Although the questioning was by people she knew, still those people were in authority. It would seem that under such circumstances admissions which are voluntary would be made within a reasonable time after the beginning of the interrogation. Statements elicited from the accused after prolonged detention and pressure, can

can be looked upon with grave suspicion. If the accused had wished to confess, she would have done so at the beginning, but her prolonged refusal to do so, even in the presence of people she knew, casts a grave doubt in the mind of counsel that such statements were willingly made by her. The presence of all of these officers repeatedly asking her questions in her confused state of mind; the reading of the statutes of the different crimes by the District Attorney and his statement to her that he had been accused of killing four men and might have faced the firing squad except for his confession to the authorities; the repeated statement of the officers that they did not believe Ray put the poison in the lemon juice and urging defendant to tell who did etc., finally brought about the expected response from a weary, grief stricken and overborne woman. It was as was said in the case of *Rechin v. People of Cal.* supra, 342 U.S. 165, 72 S. Ct. 205:

"The simple and peaceful process of questioning breeds a readiness to resort to bullying and to physical force and torture. If there is a right to an answer, there soon seems to be a right to the expected answer,--that is, to a confession of guilt."

After 3½ hours of such persistent questioning Sheriff Nelson said:

T. p. 77: "I don't believe that Ray put that poison in that cup. Why don't you tell us the truth about that poison and how it got in the cup." I says "Tell us the truth about it so as we can clear this thing up."

He was pressuring her for an answer--the expected answer.

The Sheriff continues: T p. 78.

"She started crying and said 'I will never see my children any more.' And I says, Yes, you would see your children again, Mrs. Ashdown. I says, Your children will be taken care of. I says, Just tell us who put the poison in the cup."

And so after 5½ hours of persistent questioning he got the expected answer.

"T. p. 78: "She says: 'I put it in.' etc."

Counsel cannot elaborate more upon the

record in this case. It is most clear. Hilda Hopkins Ashdown was never afforded the protection of our Constitutional guarantees. She was denied them.

POINT TWO.

THAT IF INSTRUCTION #6 WAS PROPERLY GIVEN TO THE JURY, THEN THE JURY COULD NOT HAVE PROPERLY CONSIDERED THE CREDIBILITY OF THE CONFESSION AS EVIDENCE, BECAUSE THE TRIAL COURT FAILED TO ADMIT ALL OF THE EVIDENCE ON THE QUESTION OF WHETHER THE CONFESSION WAS VOLUNTARY, AND THE CIRCUMSTANCES SURROUNDING ITS BEING MADE, TO THE JURY.

The Court has ruled that Instruction #6 was properly given in allowing the jury to weigh the circumstances surrounding the giving of the confession and determining not the admissibility of the confession but rather the credibility of the confession as evidence.

The Court cites the language of the majority opinion in the case of State v. Crank, 105 Utah 332, 142 P. 2nd 170:

"We agree with the rule approved in those cases, that a confession is not admissible in evidence unless it was voluntarily made; that this question must be determined by the court from all of the evidence from both

sides bearing thereon; that if the court is satisfied from the evidence that the confession was voluntary, then the court admits the confession in evidence to the jury, together with all of the evidence on the question of whether it was voluntary, and the circumstances surrounding its being made, and from such evidence the jury must determine the weight and credibility to be given it. (underlining ours) but may not determine its competency as evidence, that being a question for the court."

The Jury in this case then did not have before it all of the evidence on the question of whether the confession was voluntary and the circumstances surrounding its being made, because the testimony of Patrick H. Fenton, John Walter Segler, Milda Hopkins Ashdown and William Henry Hopkins, was not submitted to the Jury. This testimony was given in the absence of the jury and before the Court only. The jury did not hear the testimony of Patrick H. Fenton, as to the statement made by him to defendant, they did not hear the testimony of Walter Segler, an uncle of the accused, who testified that he protested the "railroading" of that girl, and

requested that she be given an attorney, that he was kept out of the court room and told she had an attorney, or of her father, William Henry Hopkins who testified to the same thing, that they were advised an attorney was with Milda to represent her, and the testimony of Milda Hopkins Ashdown herself, who testified that Pat Fenton, the District Attorney, had told her he killed four men while in the Service and confessed or might have faced a firing squad and that it would be better for her to confess.

It was then the duty of the Court to recall all of these witnesses and submit all of this evidence to the Jury. Without this testimony and evidence before them, they could not properly pass upon and determine the weight and credibility to be given it, and the instruction #6 to them by the Court may have been a proper instruction, if the Jury had had before it all of the evidence bearing upon the question, which

they did not, and such would be contrary to the ruling heretofore made by this Honorable Court.

CONCLUSION

Because counsel for Appellant so strongly feels that matters of controlling importance have been overlooked by the decision of this Court resulting in injustice, this petition for rehearing is respectfully submitted, and for the reasons covered herein petitioner by her counsel, earnestly submits that she should be granted a rehearing.

Respectfully submitted

J. Vernon Erickson.

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