

Mock Supreme Court Argument in *State v. Castelli*, 92 CONN. 58 (1917)

Chief Justice Rogers: "Good morning. We will now hear argument in the case of State v. Castelli. Is counsel for Mr. Castelli ready to proceed?"

Attorney Brendon P. Levesque for the defendant:

Argument by the Defendant

Good morning and may it please the Court, my name is Brendon Levesque of Horton, Shields and Knox and I appear on behalf of the appellant, Mr. Castelli.

The Lack of a Pre-Confession Warning of Mr. Castelli's Right Against Self-Incrimination Violated that Right and Warrants a New Trial

No one disputes that Mr. Castelli provided a confession to the murder of his wife. The issue is not the existence of the confession, but the total lack of the pre-confession protections afforded Mr. Castelli by Article First of the Connecticut Constitution.

Article First, section 8 provides various rights to accused parties in criminal cases. The right to be heard, the right to counsel, the right to notice of the charges against one's self—these are essential protections of parties faced with the prosecutorial powers of the state.

And there among them is the essential right not to be "compelled to give evidence against [one's] self."

Question by Chief Justice Rogers: Counselor, let me stop you there. While I agree the right exists, the state is correct in pointing out that we have never articulated a rule requiring that criminal suspects be apprised of the right prior to questioning. As I see it, there cannot be a violation of a rule that doesn't exist. Why shouldn't that settle the question before us?

Answer: Your honor, it is true that there is technically no rule that would require a criminal suspect to be informed of his rights against self-incrimination prior to questioning.

But that is because such a rule would be superfluous—the existence of the right is in itself a rule against depriving an individual of that right.

The right against self-incrimination would be meaningless if the state could strip a citizen of that right at exactly the moment when its protections were intended to operate.

Because citizens are not expected to be scholars of our state constitution, failing to inform one of his right against self-incrimination is no different from affirmatively telling them they have no such right. In either case, the suspect operates on the same mistaken belief that they can't simply refuse to provide evidence against themselves.

And that is exactly what happened here. In his first interrogation of Mr. Castelli, the New Haven County coroner at least told him that he could not compel or obligate him to confess. But he made no mention of the fact that Mr. Castelli had a constitutional right against incriminating himself.

Worse, after obtaining an initial confession from Mr. Castelli, this same coroner had Mr. Castelli reenact the alleged events of the night in question without ever mentioning that Mr. Castelli could decline to do so, much less that he had a right to decline to do so.

Evidence of this sort—unlawfully obtained evidence of an incredibly damning nature—undoubtedly affected the course of the trial, which ended in Mr. Castelli's conviction. The admission of this evidence was error in light of the constitutional violation committed in obtaining it. This warrants that this Court vacate the conviction and remand this case for a new trial.

The second issue is that Mr. Castelli's Confession Was Not Voluntary and Only Made in the Face of Undue Influence

Even if there were not so flagrant a constitutional flaw with Mr. Castelli's confession, there is reversible error in the trial court's admission of what was clearly an involuntary confession made in the face of undue influence.

Moments before he decided to make his first confession, Mr. Castelli had been walked to the door of a room in which his alleged accomplice, Mr. Vetere, sat writing his own confession. An officer told Mr. Castelli that Vetere was "telling the whole story." This series of events is properly viewed as a transparent play as opposed to good police work.

Only then did Mr. Castelli provide his initial confession. The state's obvious implication was that, since Mr. Vetere was "coming clean," it was in Mr. Castelli's interests to get ahead of the story and provide his own competing account. This is a transparent ploy to compel Mr. Castelli's confession. A confession made in such circumstances cannot be said to be voluntary.

Additionally, because Mr. Castelli was not made aware of his right against self-incrimination, the state officers exerted a level of undue influence over his confession. By virtue of their office, the coroner and police officers wield a certain level of influence over the decisions of criminal defendants.

Question by Justice Zarella: We're not concerned with "influence," though, counselor. We are concerned with "*undue* influence." Police officers may have some influence, but can you really say it was undue here?

Wouldn't that be saying investigators are *always* exerting undue influence and then every piece of evidence they obtain from suspects is tainted?

Answer: No, your honor. What made the officers' and coroner's ordinary influence *undue* influence here was the absence of a warning that Mr. Castelli had a constitutional right against self-incrimination. He simply did not know he could refuse to answer. Without that knowledge, questions from state actors take on an overpowering weight. Under the circumstances, it appeared Mr. Castelli had no option but to comply. That is undue influence.

Finally, the question of whether or not undue influence was exerted here is answered definitively by Mr. Castelli's own testimony at trial—that police officers had whipped him with a hose prior to his confession—

Question by Justice Robinson: But, counselor, isn't it true that that testimony only came after the state had rested its case?

The trial court made a pre-trial decision to admit the confession, apparently without any evidence of this allegation of whipping.

Why should we consider that allegation here if it was not part of the trial court's consideration?

Answer: Your honor, it is true that, insofar as the record reflects, Mr. Castelli did not apprise the trial court of this fact until well into the trial. The reason this Court should nonetheless consider this fact is two-fold.

First, this court performs *de novo* review over constitutional questions like the one presented here, which frees this Court from deferring to the trial court's decision.

Second, this fact is so clearly indicative of a violation of one of the most vital rights afforded by our constitution—the right not to incriminate oneself, much less be forced to do so—that it demands consideration here.

It is bad enough that Mr. Castelli was not told of this right before being asked for a confession—that alone warrants a new trial here. But the notion that he was actually *physically* compelled into providing that confession is so far outside the bounds of questioning practices permitted by this state's constitution that it must be taken account of in this court's decision.

The evidence of Mr. Castelli's confessions had an undisputable impact on the outcome of this trial. The trial court had two independently sufficient grounds for denying admission of those confessions into evidence: the constitutional violation that gave rise to them and the undue influence the state exerted in obtaining these involuntary confessions. For these reasons, we ask that Mr. Castelli's sentence be vacated and this case remanded for a new trial from which these confession are excluded. Thank you.

Attorney Gregory T. D'Auria for the State

Argument by the State

Good morning and May it please the Court, my name is Gregory D'Auria representing the State of Connecticut in this appeal.

The defendant does not dispute that he confessed to murdering his wife. In fact, he provided a detailed confession to the New Haven Coroner, contained in exhibit 39, and went on to re-enact for the officers exactly how he committed the crimes. Having been convicted of the crime, the defendant cannot contest that there was not sufficient evidence – including his confession -- to support the conviction.

Rather, he claims that the trial judge should not have permitted evidence of his re-enactment of the crime at his trial because doing so violated his rights under our state constitution. Specifically, he argues that this Court should adopt a rule barring

evidence of a confession unless the State demonstrates that the defendant was specifically advised of his state constitutional right against self-incrimination.

The Court should reject this proposed rule for several reasons.

First, Article First, section 9 of our 1818 Constitution of Connecticut simply provides that a defendant "shall not be compelled to give evidence against himself." The United States Constitution has very similar language, found in the 5th Amendment.

As we stand before this Court today, in the year 1917, the United States Supreme Court has never held that the failure to provide such a warning or advisement of his rights before taking a confession will result, per se, in an exclusion of that confession from evidence.

Question by Chief Justice Rogers: Counselor, you would agree, wouldn't you, that the rights protected by the federal constitution only provide a floor—that is, the state constitution can provide greater protections to its citizens, and we as a state court can hold that such a warning is necessary as a matter of state constitutional law?

Answer: Your Honor, of course I agree generally with the proposition that the state can provide greater protection to its citizens and that it is within this Court's authority – independent of the federal courts -- to interpret the state constitution. The State's position is that the Court should NOT interpret our state constitution in the way the defendant proposes and one of the reasons supporting our position is that nothing in the letter or the spirit of the Constitution – state or federal -- or in this Court's precedents requires such a warning. The Court would be writing constitutional law -- and not interpreting it -- if it adopted such a rule.

Rather, this Court has consistently held that for a confession to be admissible the State must simply meet its burden of demonstrating that it was obtained voluntarily. This can be demonstrated in several ways, and the Court has always looked at the totality of the circumstances.

Question by Justice Zarella: Counselor, wouldn't it be easier for the State to prove that the statement or the confession was given voluntarily if we had a rule requiring the police or the agents of the state to issue the warning before taking any statements. Then the State could simply demonstrate to the Court that the warning was given and a confession followed; and from that a finding of voluntariness is very likely for the State?

Answer: What Your Honor describes might very well be a reasonable practice. Police departments and prosecutors might wish to adopt it as the best way to ensure that they can prove a confession or statement was made voluntarily. But that does not make it a constitutionally required rule.

The State can meet its burden in a number of ways, as the facts of this case illustrate. The State can demonstrate that no threats were made or inducements offered to obtain a confession. The State can describe the circumstances of the confession and the defendant is free to contest the State's description or provide evidence of the circumstances himself. From this evidence, the trial judge can make a determination of whether the defendant was under any duress or whether the defendant's statements were in any way involuntary.

In this case, for example, there was evidence that notwithstanding that no warning had been given before the defendant reenacted the crime at the scene on May

3rd, the form on which the defendant provided his written confession to the coroner a week earlier is prefaced by a written warning that he didn't need to say anything unless he chose to, and that the coroner could not compel him to make any statement. Similarly, there was evidence that before signing an affidavit for the purpose of extradition, the defendant read it carefully and made a correction, and that the notary had warned the defendant that anything he signed might be used against him.

Under these circumstances, the trial judge's finding that the defendant's reenactment of the crime at the crime scene was done voluntarily is well-founded.

Question by Justice Robinson: But counselor, can a confession truly be voluntary if the defendant does not know that he has constitutional right to remain silent? Doesn't having a rule requiring a standard warning best insure that that defendant's rights are protected?

Nor does providing a warning to the defendant necessarily ensure that the defendant understands those rights – it merely demonstrates that the officer has recited them. Requiring such a standard warning therefore does not necessarily enhance constitutional protections and comes at a cost of jeopardizing convictions of criminals who have committed serious crimes and confessed to them.

The State urges the Court to uphold its jurisprudence requiring only satisfactory evidence of voluntariness, measured in the totality of the circumstances. It should reject a rule that a statement cannot be voluntary if no prior warning was issued.

Question by Chief Justice Rogers: You would admit, I take it, that if there were undue influence the State might fail in its burden of demonstrating that the statement was made voluntarily. Why isn't the defendant correct that under the

circumstances here we should conclude that the confession was made only because of undue influence?

Answer: I have two responses to the defendant's argument.

First, the defendant's argument that by telling him that Mr. Vetere was already providing his story about the crime that the officer was in some way compelling him to confess is unavailing. What the defendant calls a "transparent ploy" is actually good police work. It can always be said that a confession – or any statement – is prompted in some way by some self-interest. The fact that the officer might have made that self-interest more evident to the defendant in no way renders the confession involuntary.

As to his claim that he was physically coerced into confessing, the defendant admits that he did not raise this issue at the pre-trial hearing. If he had, the trial judge could have considered it and determined whether to admit the confession. Since he did not, it was entirely appropriate for the confession to come into evidence and the defendant was free to argue to the jury that it should not find the confession reliable because it was coerced, including coerced physically. The trial judge in fact instructed the jury that it could disregard any of the confessions if it found that defendant was frightened or forced to make them. The jury obviously did not believe that this happened.

DECISION

Comment by Chief Justice Rogers: Thank you counsel. After consideration of the parties' scholarly and well-presented arguments, this court reached a decision in this appeal.

Justice Robinson, playing the part of Justice Beach: Justice Beach, writing for the majority, stated: There is no error. We conclude that the state has proven that Castelli's confession was not obtained by coercion or distress. Specifically, that claim was not raised until the middle of the trial, and the jury properly could have refused to credit Castelli's testimony that the police beat him with a hose to force him to confess.

Moreover, we reject the defendant's argument that a formal warning or advisement of rights is required in all cases. Although such a warning is advisable because it is "satisfactory evidence" to prove that a confession was not obtained by duress, it is not constitutionally is not required in all cases. In any event, the record shows that Castelli received just such a warning in New York, a week before he gave his confession and reenacted the crime in sign language in New Haven.

Accordingly, we conclude that Castelli's constitutional rights were not violated, and we uphold the judgment of conviction.

Justice Zarella, playing the part of Justice Wheeler: I respectfully dissent from the judgment of the majority to uphold Castelli's conviction. In my view, the single warning given to Castelli a week before in New York "cannot in fairness" be seen as enough to protect his rights. I would hold that Castelli "was entitled to a warning that he did not need to enact the tragedy of his crime in order to furnish the state evidence of his guilt. A statement made to a coroner by an accused under arrest without a warning from him that he need not make it cannot be held to be legally voluntary. So acts, conduct, and statements explanatory thereof, made at the solicitation, persuasion, or command of a coroner, cannot be held to be legally voluntary if made without such warning." I conclude, therefore, that Castelli's confession, made without such a

warning, was involuntary and violated his rights under our state's constitution.

Because the use of this confession violated his rights under our state's constitution, I would find error, and order a new trial.

Chief Justice Rogers: Adjourn Court/final comments.