

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

STATE OF WEST VIRGINIA

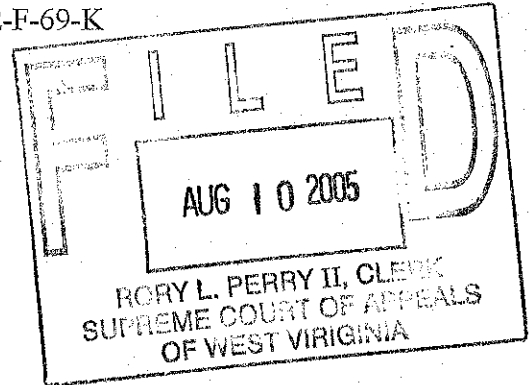
V.


NO. 31943

CASE NO: 02-F-69-K

TERRI SINGLETON,

PETITION FOR APPEAL



  
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JOHN D. WOOTON  
West Virginia State Bar #: 4138  
P.O. Box 2600  
Beckley, WV 25802-2600  
Counsel for Appellant, Terri Singleton

## Index

Nature of the Ruling	4
Statement of the Case	4
Statement of the Facts	4
Assignments of Error	5
Argument	5
Conclusion	11
Table of Authorities	11
Certificate of Service	12

### **Nature of the Ruling**

This Appeal is based upon Terri Singleton's conviction of conspiracy to possess with intent to distribute marijuana in the Circuit Court of Raleigh County, West Virginia, for which she was sentenced to 1 to 5 years.

### **Statement of the Case**

The Petitioner-Appellant was arrested on September 19, 2001 and charged with conspiracy to possess with intent to distribute controlled substances. The trial court considered and denied the Petitioner-Appellant's motion to suppress on November 26, 2002.

The matter came on for a jury trial before the Honorable H. L. Kirkpatrick, III beginning on August 27, 2003. On August 29, 2003 the Petitioner-Appellant was found guilty on the conspiracy charge. On November 24, 2003 the Petitioner-Appellant was sentenced to a term of imprisonment of one to five years. She was allowed to remain free on bond pending an appeal.

### **Statement of the Facts**

On September 18, 2001 officers with the TRIDENT Task Force were contacted by law enforcement in San Diego, California. They were informed that a drug detection dog had indicated a positive reaction on a Federal Express package being shipped to Beckley, West Virginia. Upon execution of a search warrant the package was found to contain approximately ten (10) pounds of marijuana.

The TRIDENT detectives were told by co-defendant Ronald Rhodes that he had been approached by Terri Singleton and had agreed to pick up the package for her.

On September 19, 2001, Detectives Ronnie Booker and Dustin Joynes located Ms. Singleton at her residence. Upon their request she was placed in the front seat of the unmarked police car and questioned by the officers. Two other investigators later joined the two detectives and there were other uniformed officers in the area. The front door adjacent to Ms. Singleton remained open throughout the session.

The admissibility of the tape recording of the interrogation and Ms. Singleton's statements to the Detectives were raised by the Petitioner-Appellant prior to and during the trial and is the basis of this appeal. At no point during Ms. Singleton's discussion with law enforcement was she ever advised of her Miranda rights to remain silent or to have counsel present. The State's position was that the interview and Ms. Singleton's statements were not the result of custodial interrogation and, therefore, were admissible. The trial court agreed.

#### **Assignments of Error**

The trial court committed reversible error in admitting into evidence the tape recording of the police interrogation of the Petitioner-Appellant and statements made by the Petitioner-Appellant.

#### **ARGUMENT**

- I. THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN ADMITTING THE TAPE RECORDING MADE OF THE POLICE INTERROGATION OF THE PETITIONER-APPELLANT AS WELL AS STATEMENTS MADE BY THE PETITIONER-APPELLANT DURING THAT INTERROGATION BECAUSE SUCH EVIDENCE WAS OBTAINED THROUGH COERCION AND THE PETITIONER-APPELLANT DID NOT KNOWINGLY, WILLINGLY AND VOLUNTARILY WAIVE HER CONSTITUTIONAL RIGHTS.

Well before the United States' Supreme Court issued its decision in Miranda v.

Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed. 2d 694 (1966) it was clear that the law did not allow the use of involuntary or coerced confessions. See, State v. Brady, 104 W.Va. 523, 140 S.E. 546 (1927).

The West Virginia Supreme Court of Appeals has stated that “the State must prove, at least by a preponderance of the evidence, that confessions or statements of an accused which amount to admissions of part or all of an offense were voluntary before such may be admitted into the evidence of a criminal case.” State v. Woods, 169 W.Va. 767, 769, 289 S.E.2d 500 (1982), quoting, State v. Starr, 158 W.Va. 905, 216 S.E.2d 242 (1975).

“The ultimate question is whether the pressure, in whatever form, was sufficient to cause the petitioner’s will to be overborne and his capacity for self-determination to be critically impaired. Culombe v. Connecticut, 367 U.S. 568, 602, 81 S.Ct. 1860, 6 L.Ed. 2d 1037 (1961). Inasmuch as the degree of pressure necessary to crush one’s will varies with the individual and the circumstances of the arrest and detention, a finding of coercion and involuntariness must be based upon a careful consideration of the totality of the circumstances.” Ferguson v. Boyd, 566 F.2d 873 (4<sup>th</sup> Cir. 1977).

In determining the voluntariness of a confession, the Court must inquire whether, considering the totality of the circumstances, law enforcement officials have overborne the will of the accused. The factual inquiry centers on (1) the conduct of the law enforcement officials in creating pressure; and (2) the suspect’s capacity to resist that pressure. A close look at the facts of this matter clearly demonstrate that this was a coerced confession.

Ms. Singleton was repeatedly threatened and coerced with statements regarding the possibility of her losing her livelihood, her home and her children as a result of being incarcerated. The Supreme Court has stated that “the option to lose their means of livelihood

or to pay the penalty of self-incrimination is the antithesis of free choice to speak out or remain silent.” Garrity v. State of New Jersey, 385 U.S. 493, 495, 87 S.Ct. 616, 17 L.Ed. 2d 562 (1967). In Garrity, the defendants were told that if they refused to answer the interrogator’s questions, they would be removed from office. Similarly, the Petitioner-Appellant here was forced to answer the Detectives’ questions upon repeated claims that they would “come and get her” and incarcerate her, accompanied by continued threats that she would be reported to HUD, lose her housing and lose her children.

“If the Court determines, after considering these factors, that the defendant’s confession was involuntary due to the improper application of psychological pressure, the confession is inadmissible at trial.” Lynumn v. Illinois, 372 U.S. 528, 534, 83 S.Ct. 917, 9 L.Ed.2d 922 (1963). In Lynumn, the defendant was convicted in Illinois State Court of the possession and sale of marijuana based upon a confession obtained after officers threatened her with loss of her children and government benefits.

“It is thus abundantly clear that the petitioner’s oral confession was made only after the police had told her that state financial aid for her infant children would be cut off, and her children taken from her, if she did not “cooperate.” These threats were made while she was encircled in her apartment by three police officers and a twice convicted felon who had purportedly ‘set her up’. There was no friend or adviser to whom she might turn. She had had no previous experience with the criminal law, and had no reason not to believe that the police had ample power to carry out their threats. We think it clear that a confession made under such circumstances must be deemed not voluntary, but coerced.”

Lynumn, supra, at 534; See also, United States v. Tingle, 658 F.2d 1332 (9<sup>th</sup> Cir. 1981) (psychological coercion existed when officers told the accused that she should cooperate and confess or she might not see her children “for a while”).

In State v. Stotler, 168 W.Va. 8, 282 S.E.2d 255 (1981), the Court reversed the conviction of the defendant Stotler because the Court held that “to render admissible evidence of an extra-judicial confession by an accused to one in authority...it must appear that the confession was freely and voluntarily made and without previous inducements of a temporal or wordly character in the nature of threats or intimidation, or some promise or benefit held out to the accused. The Court held that “the trial court made no findings of fact on the issue of whether the confession was procured by an improper inducement. In absence of findings of fact by the trial court and upon review of the record, we find that Deputy Burt employed the “family approach” in the appellants’ interrogation by attempting to induce him to confess by confronting him with the welfare of his wife and children, by indicating that his silence adversely affected their welfare and by promising the release of his wife if he did confess. We further find that the confession was procured by these improper inducements. The testimony of the appellant and his wife, as well as the evidence of the chronological relationship of the confession and the wife’s release support such findings. This reprehensible set of facts is further exacerbated by the undisputed facts that the appellant was held incommunicado for fourteen hours following his arrest, was not then represented by counsel, could barely read or write and was not taken before a magistrate until the Monday following his arrest early Saturday morning.” See Stotler

It is important to note that in Stotler, the trial court did submit this issue to the jury with an instruction on whether the confession was voluntarily given. Notwithstanding the

same, the Supreme Court ruled that that was an improper inducement by using the family approach.

It is abundantly clear in the case at hand, that the police officer used and abused Terri Singleton with the family approach.

More appropriate applications of the law with respect to coercive interrogations as they would apply to the facts of this case could not be expected. A close examination of the transcript of the conversation between law enforcement and Ms. Singleton demonstrates that Ms. Singleton denied involvement in the alleged conspiracy thirteen times before she gave into the coercion. The facts in this matter clearly establish that the actions of the detectives with the TRIDENT Task Force were both subtle and blatant forms of psychological persuasion to solicit Ms. Singleton's confession.

II. THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN ADMITTING THE TAPE RECORDING MADE OF THE POLICE INTERROGATION OF THE PETITIONER-APPELLANT AS WELL AS STATEMENTS MADE BY THE PETITIONER-APPELLANT DURING THAT INTERROGATION BECAUSE SUCH EVIDENCE WAS OBTAINED WHILE THE PETITIONER-APPELLANT WAS IN CUSTODY AND WITHOUT THE BENEFIT OF HER RIGHT TO COUNSEL OR HAVING BEEN APPRISED OF HER MIRANDA WARNINGS.

Both the United States Supreme Court and the West Virginia Supreme Court of Appeals have established the right to counsel during police custodial interrogations. Escobedo v. Illinois, 378 U.s. 478, 84 S.Ct. 1758, 12 L.Ed.2d 977 (1964); State v. Hamrick, 160 W.Va. 673, 236 S.E.2d 247 (1977); State v. Bradley, 163 W.Va. 148, 255 S.E.2d 356 (1979).

Factors to be considered by a trial court in making a determination of whether custodial interrogation exists include: the location and length of the questioning; the nature of questioning as it relates to the suspect offense; the number of police officers present; the use or absence of force or physical restraint; the suspect's verbal and non-verbal responses to the police officer; and the length of time between the questioning and the formal arrest. State v. Preece, 181 W.Va. 633, 383 S.E.2d 815 (1989).

Here, the questioning occurred in Detective Booker's police car in the presence of four (4) officers. As argued above there were numerous statements Ms. Singleton was going to lose her home and children. Her "confession" only occurred after she was informed that the officers had proof and her only way to help herself was to admit to the allegations.

The State's response to the Petitioner-Appellant's motion was essentially that she was not in custody as the door to the cruiser was open and she was later allowed to leave. Even if that were not disputed, Miranda does not require that a defendant be arrested for there to be custodial interrogation. See also, Orozco v. Texas, 395 U.S. 324, 89 S.Ct. 1095, 22 L.Ed. 2d 311 (1969).

A review of the Petitioner-Appellant's responses to the detectives indicates that Ms. Singleton's impression was that she was not free to leave the vehicle. In fact, on the tape of this incident it is clear that Ms. Singleton is referred to as "the defendant." When the police addressed someone as a defendant, it is abundantly clear that they are not only a suspect, but have actually been processed or at least in custody. The same would appear to a reasonable person, in light of all the circumstances. Based upon the surrounding circumstances, it is not credible to conclude that the police officers did not know that their actions were reasonably likely to invoke an incriminating response from Ms. Singleton.

Both West Virginia and the federal court system hold that volunteered admissions by a defendant are not rendered inadmissible due to a failure to comply with the Miranda procedural safeguards unless the defendant was both in custody and being interrogated at the time of the admission. The Petitioner-Appellant respectfully asserts that the trial court committed reversible error in admitting the audio recording and statements made as a result of unconstitutional custodial interrogation.

### CONCLUSION

Because the Circuit Court of Raleigh County committed reversible error in admitting the tape recording of the Petitioner-Appellant and statements made during unmirandized custodial interrogation, the Petitioner-Appellant respectfully requests that this Court reverse the Order and Judgment entered by the trial court and remand the matter for a new trial.

TERRI SINGLETON  
BY COUNSEL

BY:

  
THE WOOTON LAW FIRM

JOHN D. WOOTON (4138)  
P.O. Box 2600  
Beckley, WV 25802-2600

Table of Authorities

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Ferguson v. Boyd, 566 F.2d 873 (4<sup>th</sup> Cir. 1977)..... 6

Garrity v. State of New Jersey, 385 U.S. 493, 87 S.Ct. 616, 17 L.Ed.2d 562 (1967)..... 7

Lynumn v. Illinois, 372 U.S. 528, 83 S.Ct. 917, 9 L.Ed.2d 922 (1963)..... 7

Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966)..... 6

Orozco v. Texas, 395 U.S. 324, 89 S.Ct. 1095, 22 L.Ed.2d 311 (1969)..... 10

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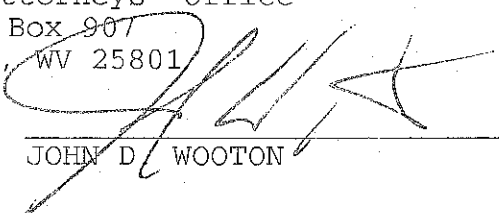
CASE NO. 02-F-69-K

TERRI SINGLETON,

CERTIFICATE OF SERVICE

I, John D. Wooton, counsel for Appellant, Terri Singleton, do hereby certify that today a true copy of the foregoing Petition for Appeal was this day mailed to the following by first class mail, postage prepaid, this 22 day of August 2005.

Tom Truman  
Prosecuting Attorneys Office  
P.O. Box 907  
Beckley, WV 25801

  
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JOHN D. WOOTON