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Recent Developments: Pappaconstantinou v. State: The Common-Law Requirement That a Confession Be Voluntary Does Not Apply When a Private Individual Elicits a Confession

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Pappaconstantinou v. State:

The Common-Law Requirement that a Confession Be Voluntary Does Not Apply When a Private Individual Elicits a Confession

By Jennifer Golub

The Court of Appeals of Maryland held that the common-law requirement of voluntariness does not apply to confessions elicited by private individuals. *Pappaconstantinou v. State*, 352 Md. 167, 721 A.2d 241 (1998). In so holding, the court found that questions of admissibility regarding confessions elicited by private individuals should be decided by the rules of evidence, more specifically, by the rules of relevance. This case is important to Maryland law because it sets forth a bright-line test allowing statements made to private individuals to be admissible if they are relevant.

Pappaconstantinou ("Pappas") was employed at Auto Row Auto Parts ("Auto Row") in Waldorf, Maryland. *Id.* at 170, 721 A.2d at 242. He was fired following suspicion that he was stealing from the company. *Id.* at 170, 721 A.2d at 242-43. After his termination, Pappas met with Auto Row employees, at which time he signed a statement admitting that he had stolen from the company and had been justly terminated. *Id.* at 170, 721 A.2d at 243.

Criminal charges were subsequently brought against Pappas for theft in the Circuit Court of Maryland for Charles County. *Id.* Pappas filed a pre-trial motion to suppress his statement, which the trial court did not address at the pre-trial stage. *Id.* At trial, Pappas renewed his motion to suppress. *Id.* The trial court determined that Pappas's confession was admissible because it was voluntary and competent evidence. *Id.* at 170-71, 721 A.2d at 243. A jury found Pappas guilty of twelve counts of theft under $300 and one count over $300. *Id.* at 170, 721 A.2d at 243. Pappas appealed to the Court of Special Appeals of Maryland, which affirmed. *Id.* at 171, 721 A.2d at 243. The Court of Appeals of Maryland granted certiorari and affirmed the court of special appeals. *Id.*

The issue before the court was whether Pappas' confession to his employer should have been excluded from evidence at trial for lack of voluntariness. *Id.* at 170, 721 A.2d at 242. Pappas contended that he confessed because his former employer promised not to prosecute if he admitted to the thefts. *Id.* at 171, 721 A.2d at 243. He acknowledged that no governmental actors were involved in eliciting his confession. *Id.* Arguing that no distinction exists between statements made to government agents and statements made to private individuals, Pappas urged the court to extend Maryland's common-law voluntariness doctrine to statements made to private individuals. *Id.* In the alternative, Pappas argued that the voluntariness doctrine's requirement that the statement be made to a "person in authority" should include statements made to employers. *Id.* at 172, 721 A.2d at 243. The State, on the other hand, argued that admissibility depended solely upon the reliability of the statement. *Id.* at 172, 721 A.2d at 244.

To be admissible, the court stated, a confession must be "(1) voluntary under Maryland non-constitutional law, (2) voluntary under the Due Process Clause of the Fourteenth Amendment of the United States Constitution and Article 22 of the Maryland Declaration of Rights, and (3) elicited in conformance with the mandates of Miranda." *Id.* (quoting *Ball v. State*, 347 Md. 156, 173-74, 699 A.2d 1170, 1178 (1997)). The court determined that the constitutional requirements of federal due process and Miranda warnings do not apply to private actions. *Id.* at 173, 721 A.2d at 244. Thus, the issue in *Pappaconstantinou* turned on whether Pappas's confession was admissible under Maryland law. *Id.* at 172-73, 721 A.2d at 244.

In reaching its conclusion, the court reviewed Maryland case law, which, in summary, required incriminating statements to be excluded from evidence when made directly to an "officer or sheriff, or in the presence and with at least the implicit sanction of legal authority."

Id. at 178, 721 A.2d at 246. The seminal case in Maryland, *Nicholson v. State*, held that a confession is inadmissible if it is induced by a police officer's threat or promise of advantage. *Id.* at 174, 721 A.2d at 245 (citing *Nicholson v. State*, 38 Md. 140, 153 (1873)).

The court noted only two cases upon which Pappas could rely to support his position. *Id.* at 178, 721 A. 2d at 247. The first, *Watts v. State*, held that a confession made to a reporter in the presence of the deputy sheriff and warden was inadmissible for lack of voluntariness. *Id.* at 178-79, 721 A. 2d at 247 (citing *Watts v. State* 99 Md. 30, 35, 57 A. 542, 544 (1904)). In the second case, *Scott v. State*, the defendant alleged that he was threatened by his father in the presence of the police. *Id.* at 179, 721 A.2d at 247 (citing *Scott v. State*, 61 Md. App. 599, 602, 487 A.2d 1204, 1205 (1985)). The court in *Scott* stated in dicta that the lack of an agency relationship does not "preclude a finding that the confession was involuntary." *Id.* (quoting *Scott* at 604, 487 A.2d at 1206)).

The court, however, distinguished *Watts* and *Scott* because both involved confessions obtained in the presence of the police and "[n]either case stands for the proposition that a confession elicited by purely private conduct is subject to Maryland's common-law voluntariness requirement." *Id.* at 180, 721 A.2d at 247. Thus, in order for a confession to be rendered involuntary, the confession must be given in the presence of at least one person having legal authority over the accused. *Id.* As such, the court concluded that Maryland's common-law requirement of voluntariness does not apply when a private individual, acting without police intervention, elicits a confession, as was the case here. *Id.* at 180, 721 A.2d at 248.

Next, the court rejected Pappas's alternative argument that "persons in authority" should not be limited to state actors and should include persons, such as employers, who "have real authority over the accused and the power to carry out a threat or promise." *Id.* The court stated that the requirement of voluntariness protects citizens from "overreaching" police. *Id.* at 180-81, 721 A.2d at 248. Consequently, excluding confessions obtained by private persons does nothing to further the goal of deterring overreaching police conduct. *Id.*

Rejecting both of Pappas's voluntariness arguments, the court stated that whether a statement made to a private actor is admissible depends on whether it is trustworthy, competent, and accurate. *Id.* at 181, 721 A.2d at 248 (citing *Jacobs v. State*, 45 Md. App. 634, 646, 415 A.2d 590, 597 (1980)). The court held that the issue of trustworthiness was to be reviewed under the Maryland Rules of Evidence, which permits the admissibility of all relevant evidence. *Id.* (citing MD. R. EVID. 5-402). Relevant evidence, the court stated, is evidence which makes the existence of a fact "more probable or less probable than it would be without the evidence." *Id.* (citing MD. R. EVID. 5-401). The court noted, however, that Maryland law allows for the exclusion of relevant evidence where there is a danger of unfair prejudice, confusion, or delay. *Id.* (citing MD. R. EVID. 5-601).

The trial court, the court stated, determines whether evidence is relevant and admissible. *Id.* at 182, 721 A.2d at 248 (citing *McCleary v. State*, 122 Md. 394, 408, 89 A. 1100, 1106 (1914)). Once the trial judge determines admissibility, the jury may hear the evidence and give it "whatever weight it chooses" and decide whether threats or promises were present which would have rendered the defendant's confession involuntary. *Id.* at 182, 721 A.2d at 249. Finding that the trial court did not err in determining that Pappas's written statement was "sufficiently reliable" to be admitted into evidence at trial, the court of appeals affirmed the trial court. *Id.* at 183, 721 A.2d at 249.

Following the decision in this case, the voluntariness requirement is not extended to apply to statements made to private actors. This holding may result in private actors taking the law into their own hands by coercing confessions and handing them over to the police. In other words, private actors may, in effect, perform a law enforcement function having a coercive, overreaching effect - the kind of effect the voluntariness requirement attempts to alleviate.