

**ALERT TO ALL PROSECUTORS
AND LAW ENFORCEMENT OFFICIALS!!!**

UNITED STATES OF AMERICA

v.

JORDAN MONROE, Defendant.

Cr. No. 16-055 WES

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF RHODE ISLAND

September 11, 2017

Preface

You should be aware of certain comments made by Chief Judge, William E. Smith, of the United States District Court for the District of Rhode Island in the above referenced case regarding the Reid Technique in deciding the defendant's motion to suppress incriminating statements. Among other things, the defendant, Jordan Monroe, claimed that the Reid Technique rendered his statements involuntary. **Judge Smith followed the established legal precedent in finding that the use of the Reid Technique did not violate the defendant's due process rights, and rejected the defendant's claim.** However, Judge Smith personally sided with the position taken by some criminal defense attorneys and a few law professors, who question the voluntariness of any incriminating statements made by a suspect while being questioned by law enforcement officers using the Reid Technique.

I.

Judge Smith's Opinion

In this case Judge Smith considered the defendant's motion to suppress his incriminating statements. After considering the evidence and arguments by the parties, Judge Smith denied the motion in part and granted the motion in part. He ruled as follows:

“Finally, Monroe alleges that, because he was subjected to an ‘utter refusal to honor his constitutional rights to end questioning and have an attorney appointed,’ his statements were involuntary. This argument is unavailing. As discussed above, those statements made after Monroe invoked his Miranda rights are suppressed. Short of that, Monroe has not provided any basis on which this violation rendered preceding statements involuntary. Further, Monroe is an adult with no apparent intellectual disability or other diminished capacity. Accordingly,

the Court finds the statements Monroe made prior to invoking his Miranda rights to have been voluntarily made.”

In his opinion, Judge Smith, points out: Although “Monroe argues that his statements were involuntary because they were obtained using the “Reid Technique,”... **“There is no direct evidence, of course, that the officers here employed the Reid Technique.”**

In describing the “Reid Technique” Judge Smith cites a book titled, In Doubt: The Psychology of the Criminal Justice Process, by Dan Simon, Professor of Law and Psychology at the Gould School of Law. Judge Smith references Professor Simon's description of the Reid Technique as follows:

“During the Interrogation, ‘the insistence on the suspect's guilt . . . is to be hurled persistently and unwaveringly, and [is to] be accompanied by a flat and assertive rejection of the suspect's denials of guilt.’ During this process, ‘the interrogator must make the suspect perceive that confessing is the most beneficial course of action available to him.’ To achieve this, ‘the interrogator must distort [the suspect's] perception of the situation, namely by making confessing appear to be more advantageous than refusing to confess.’ To this end, ‘the Reid Method advocates the use of interrogative techniques that have been labeled minimization and maximization, which have been deemed permissible by’ courts.

Minimization involves

presenting the suspect with a theme that reduces the import of the crime. Themes usually convey the interrogator's opinion that the crime was not so serious, that the victim deserved his fate, or that anyone else would have acted in the same way. . . . [E]xperiments show that minimizing themes are understood by lay people as implicit promises of leniency.¹⁴²

Maximization, on the other hand, involves

depicting the case against the suspect as being beyond any doubt. The implicit message is that the suspect is bound to be convicted even absent a confession, and that he faces harsh consequences, especially given the seriousness of the criminal charge . . . and the severity of the corresponding punishment Cooperating with the interrogators is portrayed as the only possible way to mitigate the direness of [the suspect's] situation.”

Judge Smith also states in his opinion, “The fact that the Reid Technique is the most widely used interrogation method, and that up to a quarter of exonerations involve false confessions, is no doubt a cause for great concern in our criminal justice system; it is, however, a different question from whether the technique, in and of itself, overbears ‘the will of the defendant’ in the instant case. The First Circuit, in discussing the Reid Technique, plainly notes that deception during questioning is permissible so long as it is not extreme. In that case, the court also noted:

‘[T]he agents’ statements exaggerating the quality of their evidence, minimizing the gravity of Jacques’s offense, and emphasizing the negative media attention that would attend Jacques’s trial all fall safely within the realm of the permissible ‘chicanery’ sanctioned by this and other courts. Jacques points to no federal authority supporting a finding of an involuntary confession under similar circumstances.’ (Jacques, 744 F.3d at 809) ”

Judge Smith further states: “While Monroe argues the Reid Technique was used ‘to discourage [him] from not admitting guilt by presenting socially accepted alternatives . . . in order to prod him into choosing the lesser guilt inferring alternative,’ there is nothing impermissible as a matter of law with this interrogation approach; it falls within the range of acceptable interrogation tactics sanctioned by the First Circuit. Monroe offers no authority, and the Court could not find any, for the contention that an agent’s minimization of crimes, under these facts, renders a suspect’s statements involuntary. Thus, Monroe’s argument that the Reid Technique violated his Due Process rights must fail.”

“The problem with this result, of course, is that it implicitly condones police interrogation tactics, such as lie detector tricks and the minimization and maximization of crimes, which, again, can lead to - or are at least present in - false confessions. Thus, the use of the Reid Technique on most competent adults is lawful until and unless it fails, and proving its failure is a herculean task to be sure.”

“A change in direction is needed. This is a point advocated by Professor Simon, in his book, In Doubt. In the book, Professor Simon reveals the weaknesses of the Reid Technique and suggests that ‘[i]nvestigators . . . cease relying on physical cues in attempting to detect deceit’ and recommends a shift from a ‘reliance on accusatorial and coercive methods . . . toward less confrontational procedures that focus on information gathering.’ This Court endorses these recommendations and strongly urges law enforcement to consider them.”

II.

Reid's Response

Contrary to Professor Simon's description, the core principles of the Reid Technique are as follows:

1. Always conduct interviews and interrogations in accordance with the guidelines established by the courts
2. Do not make any promises of leniency
3. Do not threaten the subject with any physical harm or inevitable consequences
4. Do not deny the subject any of their rights
5. Do not deny the subject the opportunity to satisfy their physical needs
6. Always treat the subject with dignity and respect

With respect to the issue of minimization/maximization, there are two types of acceptable minimization that can occur during an interrogation:

- minimizing the moral seriousness of the behavior
- minimizing the psychological consequences of the behavior

We teach never to minimize the legal consequences of the behavior.

In the White Paper written for the American Psychology-Law Society entitled, "Police-induced confessions: Risk factors and recommendations" (*Law and Human Behavior* 34,3-38 2010) the authors agree with us, stating that future recommendations for interrogation procedures should "permit moral and psychological forms of minimization, but ban legal minimization."

Our training is very specific that these excuses (interrogation themes) should minimize the moral seriousness of the subject's crime by offering psychological excuses for the crime but not remove legal consequences.

The courts consistently uphold the core elements of the Reid Technique. In fact, when investigators do not follow the guidelines that we have published in our book, *Criminal Interrogation and Confessions*, the courts may reject the incriminating statements.

In *People v. Elias* the Appeals court pointed out several prescribed Reid procedures that were not followed by the investigator, resulting in a confession that was found to be involuntary:

1. A non-accusatory interview was not conducted before initiating an interrogation
2. The investigator misrepresented the case evidence when questioning a 13 year old
3. There was no corroboration of the incriminating statement
4. There was contamination - disclosing details of the crime

In *US v. Preston*, the US Court of Appeals reviewed the confession of an eighteen-year-old with an IQ of sixty-five. The court pointed out that the investigators did not follow the cautions we suggest when interviewing individuals with mental limitations. Quoting from the court's opinion:

“The officers, however, sometimes disregarded the manual's cautions about the tactics they used.”

From *U.S. v. Jacques* 784 F.Supp.2d 59: (referenced in the decision)

“In his declaration and at the hearing, Professor Hirsch explained that the primary cause of “coerced compliant” confessions are certain interrogation methods employed by law enforcement, including a widely used method known as the Reid technique. The Reid technique is a trademarked interrogation method developed by the firm of John E. Reid & Associates, Inc....” Beyond his own intuition, however, Professor Hirsch offered no basis for concluding that these tactics had any tendency necessarily to cause false, rather than true, confessions.

... Professor Hirsch's declaration offered no other evidence of the danger of certain police interrogation tactics, and the Reid technique in particular, except to say that “the use of these tactics [employed in the Reid technique] and their correlation with false confessions are extensively documented in the literature....Despite this broad statement, he did not provide any further explanation...

In sum, the proffered expert testimony to the effect that the Reid technique enhanced the risk of an unreliable confession lacked any objective basis for support whatever. Although Professor Hirsch insisted that ‘there is a wealth of information about the risks of the Reid technique,’ he could point to none.”

False confessions are not caused by the application of the Reid Technique; they are usually caused by interrogators engaging in improper behavior that is outside of the parameters of the core principles of The Reid Technique – using improper interrogation procedures – engaging in behavior that the courts have ruled to be objectionable, such as threatening inevitable consequences; making a promise of leniency in return for the confession; denying a subject his rights; conducting an excessively long interrogation; etc.

III.

Conclusion

All prosecuting attorneys should be aware that Judge Smith's comments in the Monroe case in which he relies on Professor Simon's distorted description of the Reid Technique are his personal opinion and do not underlie his decision in the case. In legal terms, these comments are referred to as "obiter dicta." They are not a legal precedent and should not be regarded as such in future cases. In addition, for the reasons stated above, Professor Simon's description of the Reid Technique is not correct and Judge Smith's reliance thereon is incorrect as well.