Citation: *R. v. Organ-Wood*, 2019 YKTC 22

Date: 20190506
Docket: 18-00350
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Judge Cozens

REGINA

v.

HUNTER YVAN ORGAN-WOOD

Publication of information that could identify the complainant or a witness is prohibited by s. 111(1) of the *Youth Criminal Justice Act*.

Appearances:
Benjamin Eberhard — Counsel for the Crown
Amy Steele — Counsel for the Defence

RULING ON *VOIR DIRE*

[1] Hunter Organ-Wood has been charged with having committed the following offences:

- s. 344(1)(b) robbery;
- s. 346(1.1)(b) extortion;
- s. 279(1.1)(b) kidnapping; and
- s. 348(1)(b) break and enter and commit assault.

[2] The trial commenced April 29, 2019. In the course of the trial, a *voir dire* was conducted with respect to determining the voluntariness of a statement Mr. Hunter-Wood provided to Cst. Smee. Judgment was reserved. This is my judgment.

Evidence

Trial Proper

Cst. Smee

[3] Cst. Smee testified that, based upon information provided to him by K.F., a youth, on June 13, 2018, a warrant was issued for the arrest of Mr. Organ-Wood.

[4] In August 2018, information was received that Mr. Organ-Wood was in the vicinity of the Whitehorse Walmart store. Cst. Smee went to the Walmart area where he arrested Mr. Organ-Wood. Following the arrest, at approximately 3:11 p.m. Mr. Organ-Wood was provided his *Charter*-right to counsel, cautioned and warned.

[5] Mr. Organ-Wood was then transported by Cst. Smee, while handcuffed, to the Arrest Processing Unit (”APU”), where the handcuffs were removed and he was placed into an interview room in order to speak to legal aid duty counsel in private.

[6] After Mr. Organ-Wood spoke to legal counsel, Cst. Smee conducted an audio-recorded interview with Mr. Organ-Wood. The interview was video-recorded as well, although, at that time, Cst. Smee was unaware of the procedure for obtaining the video-recording from the APU. As the APU video-recordings are only available for a limited period of time, the result is that by the time of trial no video-recording existed.

Voir Dire

Cst. Smee

[7] Cst. Smee testified that at the time Mr. Organ-Wood was arrested there were six RCMP officers present, including himself. Two of the police officers were on bicycles. The reason so many officers were present was because, based on information available at the time, there were concerns about the possibility of weapons being present.

[8] Cst. Smee stated that he recalls telling Mr. Organ-Wood that he was being arrested for robbery, home invasion, uttering threats and assault. He believed, but could not state for certain, that he informed Mr. Organ-Wood that he was being charged with forcible confinement and extortion. He made no notes in this regard however.

[9] He stated that he knew Mr. Organ-Wood was 18 years old at the time of the arrest.

[10] Cst. Smee could not recall whether any other officer laid hands on Mr. Organ-Wood. He said that he was present with Mr. Organ-Wood at all times that the other officers were present.

[11] Cst. Smee testified that Mr. Organ-Wood spoke with duty counsel from 4:12 – 4:13 p.m. He stated that, as is his practice generally, he did not ask Mr. Organ-Wood any questions about Mr. Organ-Wood's conversation with legal counsel. His custom is to do so only when a detainee raises the issue with him.

[12] Cst. Smee said that he dealt with Mr. Organ-Wood in an ordinary way. Mr. Organ-Wood was polite, answering "yes sir" and "no sir" to questions.

[13] At the time of that the audio-recorded interview was conducted, Cst. Smee was dressed in his general duty uniform. He was satisfied that Mr. Organ-Wood was not under the influence of alcohol or other substances. He stated that Mr. Organ-Wood did not appear to exhibit any problems of a mental nature.

[14] Mr. Organ-Wood may have stated that he was tired, however, at no time did Mr. Organ-Wood say that this tiredness was affecting him.

[15] Cst. Smee stated that Mr. Organ-Wood did not ask for any food or drink, or for a break during the course of the approximate 45 minute interview. Mr. Organ-Wood never appeared to exhibit any discomfort or medical distress. Cst. Smee stated that Mr. Organ-Wood did not appear to him to have been crying at any time. He said that Mr. Organ-Wood did not appear to be nervous.

[16] Cst. Smee denied ever offering Mr. Organ-Wood any promises or having threatened him in any way.

[17] Cst. Smee stated that he did not provide Mr. Organ any further caution or warning prior to the taking of the statement than what was provided to him at the time of the arrest.

Mr. Organ Wood

[18] Mr. Organ-Wood testified on the *voir dire*.

[19] He stated that he believed four or five officers were present when he was

arrested as he came out of the Walmart store. He believed that he was arrested by a police officer who had been riding a bike.

[20] He stated that he did not remember much about the rights that the police officer read to him, and that he did not understand too much about them. He said that he did not understand what Cst. Smee meant when he told him that anything he said could be used against him. He said that this "kinda dropped out of my mind" when Cst. Smee was asking him questions.

[21] He described the time of his arrest as being shocking and surprising, but agreed that there was nothing shocking or surprising that occurred after the time of the arrest.

[22] Mr. Organ-Wood testified that, during the course of the interview that was conducted by Cst. Smee, he felt like he had to answer the questions that he was asked.

[23] He said that he felt uncomfortable and that he was crying, with his head down, at times throughout the interview. His eyes were welling up with tears and he was trying not to cry.

[24] He acknowledged that he never told Cst. Smee that he was uncomfortable. He also said that he never told Cst. Smee that he was thirsty. He stated that he had a head cold at the time but that he never told Cst. Smee this.

[25] He said that he didn't really want to talk, but that he did talk because Cst. Smee had told him that this was his only chance to talk. He was not sure what would happen if he did not talk during the interview.

Interview

[26] The audio-recorded statement was played in full in court during the *voir dire*. A verified transcript of the recording was also provided.

[27] The following are particularly relevant portions of the interview:

lines 111-115

Q: like you do kinda understand with the robbery, the home invasion what, what about uh so why don't you tell me what you think that's about cause obviously you know what it's about you just don't wanna talk about it. Like are you embarrassed of it?

A: No I'm actually just confused.

Q: Confused, what are you confused about?

A: Like I don't know what it's about.

Q: Well I think you do.

A: Actually I have no idea.

lines 172 – 188

Q: …need money? Right like at the end of the day I need like I need to know your motivation right? Because we and the Court system and nobody can help you unless we understand what's going on.

A: Just really hard to find work.

Q: Yeah right like these charges are serious like you understand that right?

A: Yeah

Q: Like this isn't, this isn't like let's get out tomorrow….

A: umhem….

Q: right this is like let's go to Court and I can go to the Federal Penitentiary.

A: Umhem

Q: Like are you fully understanding what that means?

A: Yes

Q: And that's why I'm saying to you like I know you're lying when you say I, I know nothing about this but this is your opportunity to tell me what is going on and what happened because maybe there's another side to this story. Right like if something else is going on in your life that you've had to do these, make these choices and that we need to know about like you need to start telling us. Right?

lines 560 – 567

Q: No? Okay so why don't you give me your side of the story then now that you know what it's all about and uh start from the beginning and tell me what happened. Watch your head. This is your time no?

A: Pardon?

Q: Nothing? Like you may not get another chance here that's what I'm telling you like so it's….

A: (INAUDIBLE)….

Q: either you start telling me….

Analysis

[28] As a statement made by a detainee to a person in authority is "presumptively inadmissible", the prosecution must prove beyond a reasonable doubt that the statement was voluntary. This is a heavy onus (see ***R.*** v. ***Lam***, 2014 ONSC 3538 at para. 232; ***R.*** v. ***Athwal***, 2017 ONSC 96 at para. 286).

[29] The Supreme Court of Canada set out the principles governing the voluntariness analysis in ***R.*** v. ***Oickle***, 2000 SCC 38.

[30] In ***Oickle*** the Court made a point of addressing "…the precise scope of the confessions rule." The Court stated:

> 33 In defining the confessions rule, it is important to keep in mind its twin goals of protecting the rights of the accused without unduly limiting society's need to investigate and solve crimes. Martin J.A. accurately delineated this tension in R. v. Precourt (1976), 18 O.R. (2d) 714 (C.A.), at p. 721:
>
> > Although improper police questioning may in some circumstances infringe the governing [confessions] rule it is essential to bear in mind that the police are unable to investigate crime without putting questions to persons, whether or not such persons are suspected of having committed the crime being investigated. Properly conducted police questioning is a legitimate and effective aid to criminal investigation... . On the other hand, statements made as the result of intimidating questions, or questioning which is oppressive and calculated to overcome the freedom of will of the suspect for the purpose of extracting a confession are inadmissible... .
>
> All who are involved in the administration of justice, but particularly courts applying the confessions rule, must never lose sight of either of these objectives.

[31] The Court further stated:

> 47 The common law confessions rule is well-suited to protect against false confessions. While its overriding concern is with voluntariness, this concept overlaps with reliability. A confession that is not voluntary will often (though not always) be unreliable. The application of the rule will by necessity be contextual. Hard and fast rules simply cannot account for the variety of circumstances that vitiate the voluntariness of a confession, and would inevitably result in a rule that would be both over- and under-inclusive. A trial judge should therefore consider all the relevant factors when reviewing a confession.

[32] The four factors the Court identified are in paras. 48 - 67:

- the presence of threats or promises;
- oppressive circumstances;
- operating mind; and
- other police trickery.

[33] The Court stated:

> 69 …Voluntariness is the touchstone of the confessions rule. Whether the concern is threats or promises, the lack of an operating mind, or police trickery that unfairly denies the accused's right to silence, this Court's jurisprudence has consistently protected the accused from having involuntary confessions introduced into evidence. If a confession is involuntary for any of these reasons, it is inadmissible.

[34] In summary the Court stated:

> 71 Again, I would also like to emphasize that the analysis under the confessions rule must be a contextual one. In the past, courts have excluded confessions made as a result of relatively minor inducements. At the same time, the law ignored intolerable police conduct if it did not give rise to an "inducement" as it was understood by the narrow Ibrahim formulation. Both results are incorrect. Instead, a court should strive to understand the circumstances surrounding the confession and ask if it gives rise to a reasonable doubt as to the confession's voluntariness, taking into account all the aspects of the rule discussed above. Therefore a relatively minor inducement, such as a tissue to wipe one's nose and warmer clothes, may amount to an impermissible inducement if the suspect is deprived of sleep, heat, and clothes for several hours in the middle of the night during an interrogation: see Hoilett, supra. On the other hand, where the suspect is treated properly, it will take a stronger inducement to render the confession involuntary. If a trial court properly considers all the relevant circumstances, then a finding regarding voluntariness is essentially a factual one, and should only be overturned for "some palpable and overriding error which affected [the trial judge's] assessment of the facts": Schwartz v. Canada, [1996] 1 S.C.R. 254, at p. 279 (quoting Stein v. [page45] The Ship "Kathy K", [1976] 2 S.C.R. 802, at p. 808) (emphasis in Schwartz).

[35] As stated in ***Lam*** at para. 237, quoting from ***Oickle***:

> …police actions become "improper only when the inducements, whether standing alone or in combination with other factors, are strong enough to raise a reasonable doubt about whether the will of the subject has been overborne"…The most important consideration in all cases is to look for a *quid pro quo* offer by interrogators, regardless of whether it comes in the form of a threat or a promise". There must be actions of the police, verbal or otherwise, which operate to induce the making of a statement through fear or hope of advantage…

Oppression, Operating Mind, Police Trickery

[36] In the present case, I am satisfied that the circumstances in which the statement was taken do not support any finding that the statement was involuntary on the basis of oppression, the lack of an operating mind, or police trickery.

[37] While Mr. Organ-Wood may have been tired, uncomfortable and even crying or attempting to hold back tears, there is nothing in the evidence before me, including the audio-recorded and transcribed statement, that would cause me to have any doubt that the voluntariness of the statement provided by Mr. Organ-Wood was compromised.

[38] I appreciate that Mr. Organ-Wood is a young man who had just turned 18 on August 30, 2018, and that he is not particularly sophisticated.

[39] Cst. Smee appears to have treated Mr. Organ-Wood courteously and professionally, and without the use of any "tactics", such as raising his voice, or cutting Mr. Organ-Wood off when he was speaking. The interview was fairly short and done in a normal interview room in mid-afternoon.

[40] I appreciate that the Court does not have a video-recording of the statement. That is unfortunate, as the lack of a video-recording deprives the Court of the best evidence that could have been available. The apparently contradictory evidence of Cst. Smee and Mr. Organ-Wood as to whether he was crying or not could perhaps have been resolved or reconciled.

[41] In some circumstances, such a failure by the RCMP to obtain and provide a video-recording, where it could readily have been done, might constitute a fatal flaw in the evidence that could contribute to a statement being found not to be voluntary. I do not consider this to be such a case.

[42] There is no requirement that a statement be video or audio recorded in order for it to meet the requirements of being voluntary. While that may be preferable, an unrecorded statement may nonetheless be considered to be voluntary when there is a proper consideration of all the relevant circumstances in which the statement was made (***Athwal*** at para. 295; ***R.*** v. ***Moore-Mcfarlane***, 2001 152 O.A.C. 120 at paras. 64 and 65).

[43] In listening to the audio-recording and reading the transcript, as well as hearing the testimony of Cst. Smee and Mr. Organ-Wood, I am satisfied that there are no concerns in regard to these areas such as to contribute to a finding that would undermine the voluntariness of the statement provided by Mr. Organ-Wood.

Change in Jeopardy

[44] There is no application before me alleging that Mr. Organ-Woods' s. 10 *Charter*-right to counsel was infringed. That said, the law is clear that, notwithstanding the absence of a s. 10 *Charter* challenge, the failure to ensure that an accused is aware of all the charges a detainee is facing when he or she speaks with counsel could undermine the voluntariness of any subsequent statement.

[45] This was discussed in ***R.*** v. ***Landriault***, 2019 ONSC 2020 as follows:

> 83 When Mr. Landriault spoke with the lawyer, it was with respect exclusively to a charge of assault. I find that Mr. Landriault was never given the opportunity to speak to a lawyer about any charge or potential charge, other than that of "assault". In the end, the indictment does not include the charge of assault; nor does the indictment include the charges of aggravated assault and assault with a weapon. Mr. Landriault was not cautioned or advised, prior to the interview, of his right to speak to counsel about the two offences with which he was ultimately charged.
>
> 84 Det. Riopel was candid in his admission that at no time during the interview did he do any one or more of the following: (a) ask Mr. Landriault if he wished to speak to a lawyer; (b) arrest Mr. Landriault for a charge other than assault; (c) give Mr. Landriault a caution; or (d) advise Mr. Landriault of his right to consult counsel. Det. Riopel was unable to explain why, in the circumstances, he took none of those steps.
>
> 85 Det. Riopel's candour is also reflected in his admission that the change from a single charge of assault to three potential charges, including aggravated assault, dangerous driving, and assault with a weapon, constitutes a significant change in jeopardy. Det. Riopel testified that the proper procedure to have followed in the circumstances would have been to re-arrest Mr. Landriault, repeat the caution, and advise him again of his right to counsel.
>
> 86 Det. Riopel's description of the significance of the change in jeopardy that Mr. Landriault faced might, on its own, be sufficient to support a conclusion that his statement was not voluntary. That description is, in any event, supported by the case law.
>
> 87 For example, in *R. v. Moore*, a change in the charge from dangerous driving causing bodily harm to assault with a weapon (i.e., a motor vehicle)

> was found to be a significant change in jeopardy that gave rise to the accused's right to be informed a second time of the right to speak to counsel (2016 ONCA 964, 34 C.R. (7th) 213, at paras. 7, 10). The change in jeopardy was measured on the basis of the difference in "moral blameworthiness" and of the change in the potential penalty faced by the accused from the original to the final charge (*Moore*, at para. 10).
>
> 88 There is a difference in moral blameworthiness between a single charge of assault and the three charges individually or collectively of aggravated assault, dangerous driving, and assault with a weapon. In addition, the potential penalty faced is different as between assault (five-year maximum sentence) and any one or more of assault with a weapon (ten-year maximum, when proceeding is by indictment), dangerous driving (five-year maximum, when proceeding is by indictment), and aggravated assault (14-year maximum).
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> …
>
> 94 In summary, I find that because of the change in jeopardy that he faced, Mr. Landriault had the right to be cautioned and to be advised of his right to counsel before proceeding with the interview with Det. Riopel. <u>As a result of the failure on the part of Det. Riopel, or any other officer involved in the investigation, to carry-out those steps, I find that the statements made by Mr. Landriault during the interview were not voluntary.</u> [Emphasis added]

[46] Cst. Smee did not have notes as to what he informed Mr. Organ-Wood that he was being arrested for. He testified that he told Mr. Organ-Wood the arrest was for the offences of robbery, home invasion, uttering threats and assault, and he thinks for kidnapping and extortion, although, given the nature and content of his testimony, it was not apparent that Cst. Smee was saying that with any certainty. In the end, Mr. Organ-Wood was charged with offences for kidnapping and extortion, offences not clearly covered by the offences for which Mr. Organ-Wood was told he was being arrested for.

[47] It would have been prudent for Cst. Smee to have taken notes of the details of the arrest. In some cases the failure to take such notes, could be problematic when the Crown is attempting to prove the voluntariness of a statement.

[48] I do not find, however, that this is such a case. The entire context must be considered. It was clear that Mr. Organ-Wood was advised that he was arrested for very serious charges. A maximum sentence of life imprisonment is available for the robbery and home invasion charges. The nature of the questions asked by Cst. Smee did not venture specifically into areas related to kidnapping and extortion. Mr. Organ-Wood was not arrested for lesser charges with one level of jeopardy, provided the opportunity to contact counsel, and then asked questions about charges of greater jeopardy to which he had not had the opportunity to contact counsel. While his overall jeopardy may have increased with the charges to which he was subsequently charged, I do not find this to have been of any consequence to the voluntariness of his statement.

[49] I appreciate that the discussion Mr. Organ-Wood had with counsel appears to have been under two minutes. I do not know what was said, nor should I unless it was of sufficient significance for Mr. Organ-Wood to waive his privilege and testify to it. I make no assumptions in this regard. Mr. Organ-Wood did not express any dissatisfaction with his discussion with counsel and any advice he may have received. There is no reason for me to believe in the circumstances that Mr. Organ-Wood would have reacted any differently within the interview if he had been advised of all the charges he was subsequently charged with prior to speaking to counsel.

[50] As such, I find that voluntariness of the statement is not undermined by this issue.

Statement as Opportunity to Tell His Side of the Story

[51] In ***R.*** v. ***Jongbloets***, 2017 BCSC 740, the Court addressed a submission by defence counsel that the police had undermined the accused's legal advice and his ability to decide freely whether to give a statement or not by telling him that the interview was his opportunity to tell his side of the story. In that case the accused was also told that other suspects were giving statements as to what had occurred.

> 83 In this case, the defence argues that the interviewing officers relied on the "same legal falsehoods" in remarking that the interview was Mr. Craciun's opportunity to tell his side of the story or paint his picture, and that the other suspects were telling or painting it for him. However, from my review of the evidence, the officers' remarks in this case are not as blatant or explicit as those in *Smith*, where the accused was told he had an opportunity to "correct errors" in the other statements and, significantly, that the judge might draw an adverse interest against the accused if he failed to provide a statement. Clearly, suggesting that an accused's failure to make a statement may lead to an adverse interest being drawn by a trier of fact is inappropriate: see for example *R. v. Thomas*, 2013 ONSC 8032 at para. 172. However, that did not happen here. Merely indicating that a police interview is an opportunity for the accused to tell his or her side of the story does not on its own create oppression or amount to an inducement: see *R. v. Robles*, 2008 BCSC 133 at paras. 196-206; and *R. v. McCotter*, 2006 BCSC 2050 at para. 31, in which a distinction was drawn between telling an accused the interview is an opportunity to tell their side of the story, versus telling them it is their only opportunity. The principle that appears to emerge from the jurisprudence is that these types of statements by the police are especially problematic where they tend to create the impression that failing to speak will adversely affect the accused's position and/or appearance at trial, thus undermining both the right to silence and any legal advice the accused may have received: see for example *R. v. Hankey*, [2008] O.J. No. 2548 (S.C.) at paras. 32-37.
>
> …
>
> 86 Ultimately, then, the significance of this type of statement by police depends on the context and specific facts of the case, including the particular wording of the statement (for example, this is an opportunity versus your best or only opportunity), how many times it is repeated, and other relevant factors in the surrounding circumstances of the interview. Examining the statements in this

> context, I do not find support for the defence position that this is a significant factor, particularly given Mr. Craciun's firm resistance when the officers would resort to the picture theme.

[52] It is concerning to me that Cst. Smee said what he did to Mr. Organ-Wood in this regard. I appreciate that in line 185 he said "…your opportunity to tell me what is going on…", which was not actually incorrect as he was referencing Mr. Organ-Wood telling him, as compared to his ability to tell anyone else, a distinction, however, I doubt Mr. Organ-Wood would have appreciated and understood.

[53] When I further consider the statement by Cst. Smee to Mr. Organ-Wood that "…you need to start telling us", and "like you may not get another chance here that's what I'm telling you so its…either you start telling me…" in lines 564-567, and my concern is greater. The use of the word "here" could be interpreted as meaning "here and now" and not meant to convey the impression that Mr. Organ-Wood would not have another opportunity at a different place and time, a distinction that, again, I doubt Mr. Organ-Wood would have appreciated.

[54] Obviously, Mr. Organ-Wood's ability to tell his side of the story was not limited to that point in time and, to the extent that Cst. Smee left that impression, his words to Mr. Organ-Wood were misleading and capable of imposing a pressure to talk about the events that could be argued to override any right to silence that Mr. Organ-Wood may have believed he had.

[55] As stated in ***Jongbloets***, the entire context in which these words were stated must be considered when deciding whether the statement by Mr. Organ-Wood was voluntary. As I stated in ***R.*** v. ***W.J.A.***, 2010 YKTC 118:

> 26 Cst. Aubin went further than he should have in this case when he told P.A. that the police statement was his only opportunity to provide the police a statement and would be his only opportunity to tell his side of the story, including at trial. Even if I accept his testimony that he meant it was P.A.'s only opportunity to tell him (Cst. Aubin) P.A.'s side of the story, this nonetheless disregards what P.A. would or could think Cst. Aubin meant. P.A. cannot be expected to have interpreted the plain words spoken to him to arrive at Cst. Aubin's purported subjective meaning, or to know his legal rights or potential legal consequences.

[56] After considering other questionable actions of Cst. Aubin in paras. 27 and 28, I stated:

> 29 I find that Cst. Aubin's actions in this regard went beyond what is acceptable. This said, I must consider these actions along with all the other evidence in order to determine whether a reasonable doubt has been raised as to the voluntariness of P.A.'s statement.
>
> …
>
> 36 I find, on a consideration of all the circumstances, that I am satisfied that the statement of P.A. was voluntary, despite the improper actions of Cst. Aubin at points within the interview. There is nothing to indicate that P.A., due for example to age, mental health or illness, was particularly susceptible to being misled by Cst. Aubin's actions. I simply do not, when I view the circumstances objectively, see an actual connection between the impugned actions and the statement being provided.

[57] Mr. Organ-Wood testified that he felt that this was his only opportunity to tell his side of the story, as a result of what Cst. Smee stated to him. This is evidence I must consider in determining whether the statement he provided was voluntary. However, Mr. Organ-Woods' testimony in this regard must be considered in light of all of the evidence. As distinguished from ***Jongbloets*** and some of the cases considered within it, there are no assertions by Mr. Organ-Wood of his right to maintain silence throughout the interview process. There is almost nothing in the other actions by Cst. Smee or in the environment in which the interview was conducted that create, in my opinion, an

oppressive atmosphere such that I believe Mr. Organ-Woods' will was overborne to the extent necessary to make his statement voluntary. Again, I say this keeping in mind his youth and his apparent lack of sophistication.

[58] Certainly, police officers should refrain from saying anything that may lead an accused to believe that he or she will not have a further opportunity to tell their side of the story. The use of words such as "your only opportunity to tell me", while they may, in retrospect, be argued to have avoided doing so in a strict or technical sense, will not satisfy a court's concern in this regard. It should always be made clear to a detainee that this is only "an" opportunity to tell their side of the story. If a police officer wants to say that it is the only opportunity to tell the particular police officer, then the detainee should also be told that he or she will have a further opportunity at another point in time to tell someone else, so that no false impression would be conveyed to the detainee.

[59] In some circumstances, the words used by Cst. Smee in this regard could be sufficient to render a statement involuntary. In consideration of all the circumstances of this case, however, I find that they did not do so.

[60] Therefore, based upon all the evidence before me, I am satisfied beyond a reasonable doubt that Mr. Organ-Woods' statement was voluntary and is admissible for use at trial.

[61] All the evidence from the *voir dire* is therefore admitted into the trial proper.

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COZENS T.C.J.