Indexed as:

R. v. Park

John Kenneth Park, Appellant; and
Her Majesty The Queen, Respondent.

[1981] 2 S.C.R. 64

Supreme Court of Canada

1981: February 23 / 1981: June 22.

Present: Laskin C.J. and Martland, Ritchie, Dickson, Beetz, Estey, McIntyre, Chouinard and Lamer JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Criminal law — Evidence — Admissibility of an oral statement made by the accused to police officers — Counsel waived the voir dire — Recognition of the right to waive a voir dire — Criminal Code. R.S.C. 1970, c. C-34, s. 582.

The appellant was charged and convicted of unlawfully breaking and entering a dwelling. An appeal to the Court of Appeal for Ontario was dismissed without written reasons.

The admissibility of a statement made by the appellant to the police, without which the conviction could not stand, was at issue. Counsel for the appellant waived the voir dire normally held to determine the voluntary nature of the statement. The question was whether an accused could waive the holding of a voir dire and, if so, whether there was a proper waiver.

Held: The appeal should be dismissed.

(1) The right to waive a voir dire: Whether the right rests upon s. 582 of the Code or upon broader ground (R. v. Dietrich (1970), 1 C.C.C. (2d) 49), the accused, personally or through his counsel, had the right to waive the holding of a voir dire. Although no particular form was essential the waiver had to be express. All that was necessary was that the trial judge be satisfied that counsel understood the matter and had made an informed decision to waive the voir dire. Counsel needed only to indicate that no objection was taken to admission of the statement without a voir dire or that voluntariness was not in issue. Silence or mere lack of objection did not constitute a lawful waiver.

Despite the waiver, there was not a duty on the trial judge to hear enough evidence, in the absence of the jury, to satisfy him that the statement was voluntarily made. The Court did not recognize any such requirement as a rule of law.

Determination of voluntariness of a confession was essentially a question of fact and waiver of a voir dire constituted an admission of primary facts that the statement was not made in circumstances where the accused person was the subject of coercive conduct on the part of a person in authority. The question of admissibility of the statement was for the trial judge to decide.

(2) Was the statement in fact made: In every case in which the Crown sought to adduce evidence of a statement made by an accused, there had to be, by definition, "some evidence" that the statement was made.

Once the issue of voluntariness was resolved, normal principles of evidence applied and there was no necessity for the judge to hold a voir dire on this issue.

(3) Inducement or threat: The appellant testified that his conversation with the police had been preceded by both a threat and an inducement such as may have rendered any resulting statement involuntary. The judge, having heard the evidence, decided to continue with the trial. Such an exercise of his discretion was not a procedural error of law.

Cases Cited

R. v. Dietrich (1970), 1 C.C.C. (2d) 49, *followed*; Ibrahim v. The King, [1914] A.C. 599; Boudreau v. The King, [1949] S.C.R. 262; R. v. Fitton, [1956] S.C.R. 958; Rothman v. The Queen, [1981] 1 S.C.R. 640; Powell v. The Queen, [1977] 1 S.C.R. 362; Erven v. The Queen, [1979] 1 S.C.R. 926; R. v. Gauthier, [1977] 1 S.C.R. 441; R. v. Dhaliwal (1980), 53 C.C.C. (2d) 158; R. v. LeBrun (1954), 110 C.C.C. 262; R. v. Deacon (1947), 87 C.C.C. 271; R. v. Melnyk (1947), 90 C.C.C. 257; R. v. Sweezey (1974), 20 C.C.C. (2d) 400; R. v. Clayton (1978), 3 C.R. (3d) 90; R. v. Spencer (1973), 16 C.C.C. (2d) 29; R. v. Isaac (1979), 48 C.C.C. (2d) 481; R. v. Mulligan (1955), 111 C.C.C. 173; R. v. Roberts, [1953] 2 All E.R. 340, referred to.

APPEAL from a judgment of the Court of Appeal for Ontario, dismissing the appellant's appeal against his conviction by a County Court Judge of breaking and entering a dwelling. Appeal dismissed.

Gordon F. Henderson, Q.C., and Edward L. Greenspan, for the appellant.
S. Casey Hill, for the respondent.

Solicitors for the appellant: Greenspan & Moldaver, Toronto.
Solicitor for the respondent: The Attorney General of Ontario, Toronto.

The judgment of the Court was delivered by

DICKSON J.:— The appellant, John Kenneth Park, was charged with unlawfully breaking and entering a dwelling in Toronto and stealing jewellery and a sum of money. He pleaded not guilty and was tried in the County Court Judges Criminal Court of the Judicial District of York, by a judge without a jury. Convicted, he was sentenced to a term of imprisonment. An appeal to the Court of Appeal for Ontario was dismissed without written reasons and the matter has now reached this Court, by leave.

At issue is the admissibility of a statement made by Mr. Park, without which the conviction cannot stand. The statement was made to police officers. In order to render the statement admissible it was incumbent upon the Crown to prove beyond a reasonable doubt that the statement had not been obtained by fear of prejudice or hope of advantage exercised or held out by a person in authority. (Ibrahim v. The King [[1914] A.C. 599] at p. 609, adopted in this Court in Boudreau v. The King [[1949] S.C.R. 262] and R. v. Fitton [[1956] S.C.R. 958], and recently affirmed in Rothman v. The Queen (judgment delivered March 2, 1981, as yet unreported [Now published at [1981] 1 S.C.R. 640]).

Proof of the voluntary nature of the statement is generally, though not invariably, made on a voir dire, a trial within a trial. In this case, however, counsel for Mr. Park purported to waive the holding of a voir dire. The issue is whether in law an accused, or counsel on his behalf, may waive the holding of a voir dire and, if so, whether there was, in the circumstances of this case, a proper waiver.

Whether an accused may waive the necessity for a voir dire has hitherto been an open question. In Powell v. The Queen [[1977] 1 S.C.R. 362], Mr. Justice de Grandpré expressed the view in obiter dicta that a voir dire could be waived (at p. 368):

> While I might be ready to accept in a proper case that counsel for an accused may well waive the holding of a voir dire, I see a considerable difference between an expressed waiver surrounded by all the precautions indicating that the question has been examined in depth and mere silence on counsel's part. The heavy onus resting on the Crown certainly cannot be displaced in such an informal fashion.

In Erven v. The Queen [[1979] 1 S.C.R. 926], the point was raised but expressly left open (at p. 940):

> Further, I would not want to say that counsel may not expressly waive the holding of a voir dire in a proper case where all precautions have been taken: See Powell v. The Queen, [[1977] 1 S.C.R. 362] at p. 368; R. v. Sweezey [(1974), 20 C.C.C. (2d) 400] at p. 416; R. v. Dietrich, [1970] 3 O.R. 725 at pp. 734-7 (Ont. C.A.) (leave to appeal to this Court dismissed [1970] S.C.R. xi). I do not express any concluded view on the matter of waiver, however, as there is no suggestion that defence counsel waived voir dire in the case at bar.

I

The Facts

The dwelling house at which the break, entry and theft occurred was located at 57 York Downs Drive. Dr. Morris Herman resided next door. At about 7:15 p.m. on the evening in question, in early December, Dr. Herman was turning into his driveway in his car when, from a distance of 20 to 30 feet, he glanced fleetingly at a man walking from his next door neighbour's property. He did not consider it of importance at the time. There was no natural light but a bright street lamp provided illumination. A four-foot hedge separated the two properties, and to some extent obstructed Dr. Herman's view of the man.

Four days later Dr. Herman picked out, from a random selection of a dozen photographs, two photographs of Mr. Park as resembling (ninety-nine percent certainty) the man he had seen. At trial Dr. Herman testified that Mr. Park strongly resembled the man, although he seemed of lighter weight and was not wearing the same type of clothes. Dr. Herman could not be certain.

After the plea and before evidence was offered at Mr. Park's trial the following remarks were made by Mr. Lewis, counsel for Mr. Park (now His Honour Judge Lewis) in relation to (i) the potential evidence of the constable who had arrested Mr. Park, and (ii) the defence position regarding the voluntariness of the only statement made to a police officer, Sergeant Cosgrove:

> MR. WILEY: (Crown Counsel)
>
> And I believe when the appropriate time comes in the evidence my friend knows of the Constable's evidence and he is prepared to admit that, and is prepared to concede that it doesn't concern the fact of the voluntariness of any statement that the Crown may proceed to introduce.
>
> MR. LEWIS: (Defence Counsel)
>
> That is correct, Your Honour. In fact, I am prepared to allow him to direct evidence at this time with the permission of the Court; I am not going to be attacking the voluntariness and there is no statement made to that officer. [Emphasis added.]

When Crown counsel at trial proposed to introduce evidence of the statement made by Mr. Park to Sergeant Cosgrove, the following colloquy took place:

> Q. Could you tell His Honour what you know about this matter?
>
> MR. LEWIS:

> At this point, Your Honour, I should point out that there's going to be a statement offered by the Crown and I'm not accepting the statement in its totality as it stands but there's no question of a voir dire. [Emphasis added.]

The witness then proceeded to recite the circumstances under which the statement had been made and the substance thereof. Mr. Park is alleged to have said, when informed of the charge of break and enter on York Downs Drive and that he had been seen coming out of the house, "that's no problem, the witness can't identify me; it was dark and I've been to the barber's since then". Sergeant Cosgrove testified that he had told Mr. Park nothing with respect to the break and enter other than that the location was on York Downs Drive.

After Crown counsel closed his case, defence counsel moved for a dismissal of the charge. The Court ruled there was sufficient evidence for a prima facie case and denied the motion. Mr. Park testified. The trial judge concluded his reasons for judgment in these words:

> I feel that the statements the accused made, and I do not have them verbatim, and I am subject to correction, but as I recall from my notes, they were to the effect, in reply to the statement, "You were seen coming out of the house on York Downs Drive,"--"That's no problem, it was dark, I can't be identified, and I've had my hair cut since"--These comments, to me, are sufficient to corroborate and strengthen (beyond a reasonable doubt) the identification, and as a result, on the whole of the evidence, I have come to the conclusion that the accused is guilty of the offence.

In his notice of appeal to this Court, the appellant raises the following issues:

1. Did the trial judge err in failing to conduct a voir dire to determine whether the statement was voluntary and admissible regardless of the fact that the appellant's counsel purported to waive the voir dire?

2. Did the trial judge err in failing to conduct a voir dire to determine whether the statement allegedly made by the appellant was in fact made?

3. Did the trial judge err in failing to conduct a voir dire, notwithstanding the purported waiver, after the appellant testified that his conversation with the police was preceded by both a threat and an inducement?

II

The Right to Waive a Voir Dire

Generally speaking, the only way that a trial judge, trying an accused with a jury, can determine whether any statement given by the accused is voluntary is by holding a voir dire in the absence of the jury. The same holds true of a judge sitting alone: R. v. Gauthier [[1977] 1 S.C.R. 441]. As a matter of sensible and general practice, a voir dire should be conducted whenever defence counsel so requests, or does not waive the voir dire. Normally, the failure to hold a voir dire will amount as a matter of law to procedural error capable of vitiating a conviction, subject to the application of s. 613(1)(b)(iii).

I am of opinion that voluntariness, as a test of admissibility of a confessional statement, may be determined without the procedural necessity of a voir dire where the voir dire is waived by the accused or his counsel. Determination of voluntariness is essentially a question of fact and waiver of a voir dire constitutes an admission of primary facts that the statement was not made in circumstances where the accused person was the subject of coercive conduct on the part of a person in authority. The question of admissibility of the statement is, of course, for the trial judge to decide, and he has a wide discretion either (i) to accept the waiver and dispense with the holding of a voir dire or (ii) to hold a voir dire or (iii) to inquire directly of counsel for the accused as to, and his understanding of, the underlying factual admissions implicit in the waiver of the voir dire.

Some courts which have recognized the legality of a waiver of voir dire have done so on the basis that the waiver is an admission by the accused of a fact alleged against him and s. 582 of the Criminal Code applies. That

section provides that where an accused is on trial for an indictable offence he or his counsel may admit any fact alleged against him for the purpose of dispensing with the proof thereof. In R. v. Dhaliwal [(1980), 53 C.C.C. (2d) 158 (Alta. C.A.)], Mr. Justice Moir on behalf of the Alberta Court of Appeal held that a waiver of a confessional voir dire by defence counsel constituted a s. 582 admission.

Other courts have held the view, which I am inclined to share, that whether or not s. 582 is authority for the accused to waive a voir dire as to the voluntariness of a confession, such a right exists apart from the provisions of the Code. This was best expressed by Gale C.J.O. delivering the judgment of the Ontario Court of Appeal in R. v. Dietrich [(1970), 1 C.C.C. (2d) 49] (leave to appeal refused [[1970] S.C.R. xi]). In that case, counsel for the Crown had taken the position that if no objection was made at trial to the admission of an inculpatory statement it was unnecessary to inquire into the circumstances under which the statement had been given. Chief Justice Gale adverted to that submission, and continued, at p.58:

> Without deciding that point, I am of the opinion that a voir dire is not required when counsel for the accused unequivocally states to the Court that a statement made by his client is voluntary and that an inquiry on the point can be dispensed with. I put my conclusion on the broad principle that it is proper and desirable for the accused or his counsel to expedite a trial by admitting that a confession was voluntary in the legal sense, if such be the case, in order to obviate the need for a voir dire. That is precisely what occurred in this case and I am persuaded that the trial Judge was right in proceeding without conducting a voir dire on the pertinent statements made by the appellant. To have done otherwise would have been absurd and would have been contrary to the interests of justice. After all, the most important consideration is that an accused be safeguarded against the admission of a confession which has not been voluntarily given; if the accused or his counsel openly specify that the statement is voluntary in all senses of the word, I see no reason for the Judge to go through a farce to prove something which has been conceded and therefore is really not in issue.

Chief Justice Gale noted that no case had been found which bound the Ontario Court on the question of waiver. R. v. LeBrun [(1954), 110 C.C.C. 262] was directly on point but the Court declined to follow that judgment, preferring the earlier decision of the Manitoba Court of Appeal in R. v. Deacon [(1947), 87 C.C.C. 271] and the suggestion of O'Halloran J.A. in R. v. Melnyk [(1947), 90 C.C.C. 257 (B.C.C.A.)]. Adverting to s. 562 of the Code, now s. 582, Chief Justice Gale said at p. 59:

> I am inclined to the view that it is a mistake to attempt to force the issue of voluntariness into s. 562. Despite adherence by our Courts to the old English common law (see R. v. St. Clair (1900), 27 O.A.R. 308, 3 C.C.C. 551, and R. v. Brooks (1906), 11 C.C.C. 188) which no longer prevails, I endorse the concept that a trial should be capable of being expedited when the accused consents to the waiving of a voir dire and that his right to do so exists apart from any provision of the Code and consequently apart from any consideration of questions of fact and law. When such a consent is given, the trial Judge should then be able to make a ruling on the basis of the consent that the particular statement is admissible.

The discussion on the point was concluded with these words at p. 60:

> It would be equally anomalous, as it seems to me, if an accused or his counsel should be able to admit facts in the indictment and yet be precluded from admitting as a fact, the voluntariness of a confession. In doing so, the accused is only impliedly admitting facts from which the Judge may conclude that the statement is voluntary in the legal sense and thus is admissible.

With respect, I agree. The Dietrich decision has been followed in a number of cases. In R. v. Sweezey [(1974), 20 C.C.C. (2d) 400], Martin J.A., speaking for the Ontario Court of Appeal, and relying on Dietrich, said, at p. 416: "Counsel may, of course, expressly waive the necessity for a voir dire even where one would normally be required, and so, in appropriate circumstances, dispense with its necessity." In the later case of R. v. Clayton [(1978), 3 C.R. (3d) 90] the same court said, at p. 92:

> We were invited to say that as a result of the decision in Powell v. R., [1977] 1 S.C.R. 362, 33 C.R.N.S. 323, 28 C.C.C. (2d) 148, 66 D.L.R. (3d) 443, there was now doubt as to whether counsel could make an admission of the type to which I have referred. Counsel submitted that despite the admission of trial counsel, there was a duty on the trial judge to hear enough evidence, or, at least, an agreed statement of facts, in the absence of the jury, to satisfy him that the statement was voluntarily made, within the meaning of the cases. In our view, unless and until there is some clear statement by the Supreme Court of Canada to the contrary, we ought to follow the principle which was laid down by this court in R. v. Dietrich, [1970] 3 O.R. 725, 11 C.R.N.S. 22, 1 C.C.C. (2d) 49, leave to appeal refused [1970] 3 O.R. 744n, 1 C.C.C. (2d) 68n (Can.) and followed in R. v. Sweezey (1974), 27 C.R.N.S. 163, 20 C.C.C. (2d) 400 at 418, the effect of which is that counsel can expressly waive a voir dire when the admissibility of a statement is in question.

See also R. v. Spencer [(1973), 16 C.C.C. (2d) 29 (N.S.S.C.- A.D.)], at p. 37.

In the present appeal the argument advanced in Clayton's case was again pressed. It was argued that despite the waiver of defence counsel, there was a duty on the trial judge to hear enough evidence, in the absence of the jury, to satisfy him that the statement was voluntarily made. With respect, I do not recognize any such requirement, as a rule of law. It may well be that, in order to avoid the danger of a mistrial, the trial judge will wish to make some inquiries and hear some evidence in the absence of the jury before accepting the waiver, particularly if the accused is represented by inexperienced counsel or unrepresented, but I do not think there is any rule obliging him to do so.

No particular words or formula need be uttered by defence counsel to express the waiver and admission. All that is necessary is that the trial judge be satisfied that counsel understands the matter and has made an informed decision to waive the voir dire. It is sufficient for counsel to indicate that no objection is taken to admission of the statement without a voir dire, or that voluntariness is not in issue. In R. v. Dietrich, supra, counsel for the defence "admitted" or "stipulated" that the statements of the accused sought to be introduced were in fact voluntary. In R. v. Clayton, supra, counsel for the defence was asked by the court if he desired a voir dire regarding a statement which the Crown proposed to introduce. Defence counsel replied that the statement was "... admitted to be voluntarily made ...". In R. v. Melnyk, supra, counsel for the defence in response to an inquiry from the court as to his position stated that he "had no objection to the confession being admitted into evidence". Although no particular form of words is necessary the waiver must be express. Silence or mere lack of objection does not constitute a lawful waiver. The question is--does the accused indeed waive the requirement of a voir dire and admit that the statement is voluntary and admissible in evidence? If that question can be answered in the affirmative I cannot think that any further procedural safeguards are necessary to protect the rights of an accused person.

If further support be needed for recognition of a right of waiver of voir dire reference can be had to the decision of the Court of Appeal of the Yukon Territory in R. v. Isaac [(1979), 48 C.C.C. (2d) 481]. The only decision which runs counter to the various appellate court decisions is R. v. LeBrun, supra, a one paragraph judgment of a single Supreme Court Judge in British Columbia. He held that an admission by counsel that a statement is voluntary is not a lawful admission of fact pursuant to s. 582 of the Code, the issue being a question of law. That decision was specifically disapproved in R. v. Dietrich, supra.

The argument was advanced, what might be termed the in terrorem argument, that grave problems may arise from allowing counsel for the accused to waive a voir dire without indicating the factual assertions to support it. Counsel may fail to appreciate the proper legal test to be invoked. Following a waiver, the accused may give evidence which discloses a threat or inducement, possibly leading to a mistrial. It was said there is room for abuse when, for the purpose of obtaining a mistrial, counsel waives a voir dire and the accused then gives evidence which shows that the waiver should not have been given by counsel or accepted by the court. That these potential problems exist cannot be denied but I should think they will be rare. I do not believe that we should fashion our criminal law on the assumption that defence counsel will be ignorant of elementary rules of criminal evidence or act in a manner abusive of the processes of the court.

I conclude that whether the right rests upon s. 582 of the Code or upon the broader ground chosen by the Ontario Court of Appeal in Dietrich's case the accused, personally or through his counsel, has the right to waive the holding of a voir dire.

While conceding that a voir dire may be waived, Mr. Greenspan, counsel for Mr. Park, contended that it must be an "expressed waiver surrounded by all the precautions indicating that the question has been examined in depth" [per Mr. Justice de Grandpré in Powell v. The Queen, supra, at p. 368]. It was contended that the purported waiver here did not relieve the trial judge of his responsibility, as it was not unequivocal and it was not surrounded by precautions indicating the question had been examined in depth. The argument rests largely upon the following passage from the transcript:

> At this point, Your Honour, I should point out that there's going to be a statement offered by the Crown and I'm not accepting the statement in its totality as it stands but there's no question of a voir dire. [Emphasis added.]

It is important to place this statement in context. The Crown had just called its witness Sergeant Cosgrove. Before he could testify, defence counsel interjected with the comment, "there's going to be a statement offered by the Crown". It seems clear from this that defence counsel was familiar with the evidence about to be tendered. Counsel then stated, "I'm not accepting the statement in its totality as it stands but there's no question of a voir dire". This indicates not only that a statement was made but that counsel was familiar with its contents. When defence counsel stated he was not accepting the statement 'in its totality', he was not referring to any problem with voluntariness but simply indicating his position that the statement was not made in the precise words attributed to the accused by the police officer. I do not think that, as to its voluntariness, the waiver can properly be said to have been equivocal.

On the matter of precautions it is apparent that Mr. Park was represented by experienced counsel. As Crown counsel notes delicately in his factum "there were indications before the court, that the appellant was not inexperienced with the criminal justice system". Mr. Park had had the benefit of a preliminary hearing where the issue of the taking of the statement had been canvassed by counsel. I do not think the trial judge erred in failing to make inquiry. Such cases as R. v. Mulligan [(1955), 111 C.C.C. 173] at pp. 176-77 and R. v. Roberts [[1953] 2 All E.R. 340], at pp. 344-45 were cited but these authorities have no application in the case at bar.

I conclude that there is no merit to the first ground of appeal.

III

Was the Statement in Fact Made

The second ground of appeal was framed in terms of error on the part of the trial judge in failing to conduct a voir dire to determine whether or not a statement allegedly made by Mr. Park was in fact made by him. The appellant argues that on a voir dire, there are always two issues facing the trial judge: the first issue is whether or not the statement was voluntary, the second issue is whether or not there is 'some evidence' that the statement was in fact made. The argument is summarized by the appellant in his factum as follow:

> It is thus submitted that the trial judge, before admitting an accused's statement, must make a preliminary finding that there is some evidence that the statement was in fact made (that issue ultimately then being left to the jury for its final determination in the same manner as any other factual assertion) and therefore, in order to waive the holding of a voir dire, an admission is required that the statement was in fact made.

In this case, counsel for Mr. Park admitted that the statement was voluntary. He did not admit, as has been noted, that the statement had been made in terms alleged by Sergeant Cosgrove. It is argued that the trial judge ought to have conducted a voir dire in order to determine whether or not there was some evidence that the statement was, in fact, made. There is no merit to the submission. In every case in which the Crown seeks to adduce evidence of a statement made by an accused, there must, by definition, be "some evidence" that the

statement was made. This evidence exists by virtue of the fact that a police officer (or other 'person in authority') is seeking to tender direct evidence of the making of the statement. Whether or not the officer is to be believed, and the weight to be given to the statement, is a matter for the trier of fact. The special rules of evidence relating to statements made to persons in authority flow from the concern of the courts to ensure that such statements are made voluntarily. Once the issue of voluntariness is resolved, normal principles of evidence apply. The fact that the testimony of the police officer is contradicted by the accused cannot affect the admissibility of the officer's evidence. Where there are conflicting versions of what was said by the accused, the jury will decide which is to be believed. There is no necessity for a voir dire on this issue. The second ground of appeal fails.

IV

Inducement or Threat

I come now to the final point of appeal, pressed rather faintly, as it seemed to me, by counsel for the appellant. It is said that the trial judge erred in failing to conduct a voir dire when, notwithstanding the waiver of voir dire by counsel, the appellant later testified that his conversation with the police officers had been preceded by both a threat and an inducement. He said that at the outset of his conversation with Sergeant Cosgrove he was told by the officer "there's two ways we can do this--the hard way and the easy way". The appellant also testified that Sergeant Cosgrove told him, "if you talk nice to me, if you do that, we will release the young lady [a friend of the appellant]". It is submitted these statements respectively constituted a threat and an inducement such as may have rendered any resulting statement involuntary. The trial judge, having heard the evidence, had three alternatives (i) to continue with the trial, (ii) to hold a voir dire, (iii) to declare a mistrial. He decided to continue with the trial. Such an exercise of his discretion was not, in my opinion, a procedural error of law. As counsel for the Crown points out, correctly, the following factors were relevant to the exercise of such discretion, (i) the defence through experienced defence counsel had waived the voir dire and stated that voluntariness as a test of admissibility was not in issue, (ii) the defence had not cross-examined Sergeant Cosgrove as to any circumstances which could be said to cast doubt upon the voluntariness of the statement, (iii) the objection of the defence throughout was not voluntariness but whether the words attributed to the appellant were the words he had spoken, (iv) the judge was hearing the case without a jury, (v) when the evidence now alleged to constitute evidence of involuntariness was given defence counsel did not suggest either voir dire or mistrial.

I would dismiss the appeal.

Appeal dismissed.