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Constitutional Law - Police Interrogation Techniques and When to Determine How Much Is Too Much - United States v. Jacques, 744 F.3D 804 (1st Cir. 2014)

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**CONSTITUTIONAL LAW— POLICE
INTERROGATION TECHNIQUES AND WHEN TO
DETERMINE HOW MUCH IS TOO MUCH—
UNITED STATES V. JACQUES, 744 F.3D 804 (1ST
CIR. 2014).**

If a defendant moves to suppress evidence via his Fifth Amendment right against self-incrimination, which prohibits courts from admitting a defendant's involuntary confession, and that confession was voluntary, then that confession is not protected by the Fifth Amendment.¹ *United States v. Jacques*² addresses the various types of coercive methods used by police to induce a confession out of a suspect, and how far they can go before infringing upon a suspect's Fifth Amendment right against an involuntary confession.³ The United States Court of Appeals for the First Circuit held that the police did not infringe upon the defendant's Fifth Amendment right against an involuntary confession.⁴

On November 5, 2008, after Barack Obama was elected to be the next President of the United States, a church with a predominantly African-American congregation was burned down in Springfield, Massachusetts.⁵ A task force comprised of the ATF, FBI, Springfield P.D., and the Massachusetts State Police was convened later; the task force received a tip that Michael Jacques ("Jacques") and another man had been bragging about their involvement in the church arson.⁶ The task force made an effort to catch Jacques making these statements, and when it did, proceeded to

¹ See U.S. CONST. amend. V; see also 42 GEO L.J. ANN. REV. CRIM. PROC. 215-16 (2013) ("To determine if a defendant's statements were involuntary, a court must ask whether, under the totality of the circumstances, law enforcement officials obtained the evidence by overbearing the will of the accused. This inquiry centers upon: (1) the conduct of law enforcement officials in creating pressure and (2) the suspect's capacity to resist that pressure.").

² 744 F.3d 804 (1st Cir. 2014).

³ See *Jacques*, 744 F.3d at 808-12 (determining mention of family member not coercive enough to violate Fifth Amendment).

⁴ See *id.* at 809-12 (noting police did not overbear defendant's will).

⁵ See *id.* at 807 ("The National Response Team for the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) concluded that the fire was deliberately set and that gasoline had been used to ignite the building. It subsequently convened a joint task force with the Federal Bureau of Investigation (FBI), the Springfield Police Department, and the Massachusetts State Police (MSP) to investigate the incident.").

⁶ See *id.* at 807.

detain and to transport him for interrogation.⁷

Over the course of the interrogation, the officers employed various interrogation tactics from the “Reid technique.”⁸ Jacques continued to deny his involvement, despite knowing his right to end the interrogation.⁹ After six hours of intense questioning, Jacques admitted to his involvement in the church arson.¹⁰ Following his arraignment, Jacques moved to suppress his incriminating statements and argued that his confession was involuntary due to the officer’s coercive tactics that had overborne his will.¹¹ The district court denied Jacques’ motion to suppress, and upon appeal, the First Circuit affirmed the decision.¹²

The Fifth Amendment prohibits a court from admitting a defendant’s involuntary confession of self-incrimination into evidence.¹³ Many cases have risen out of a defendant’s request to suppress evidence for Fifth Amendment reasons, especially when the defendant made a coerced confession.¹⁴ For instance, in *Oregon v. Elstad*, the defendant confessed to

⁷ See *id.*

⁸ See *Jacques*, 744 F.3d at 808 n.1 (“The ‘Reid technique’ is a method of interrogation pioneered by John E. Reid and Associates, aimed at extracting confessions and evaluating suspect credibility.”). “[The officers] exaggerated the strength of the evidence against Jacques, misrepresented the involvement of high-profile federal agents in the case, minimized the magnitude of Jacques’s alleged criminal conduct, interrupted Jacques’s attempts to deny his guilt, and suggested that Jacques’s continued resistance would subject him to more damning media coverage.” *Id.* at 808.

⁹ See *id.* at 808 (noting Jacques claimed his incriminating statements were merely attempt to make himself “look bigger”).

¹⁰ See *id.* (explaining Jacques confessed because he felt [officer] Mazza was honest and proved charges against him). Jacques “was ultimately charged with conspiracy against civil rights in violation of 18 U.S.C. § 241, damage or destruction to religious real property in violation of 18 U.S.C. § 247(c), and use of a fire to commit a felony in violation of 18 U.S.C. § 844 (h)(1).” *Id.*

¹¹ See *id.* (describing Jacques’ arguments in moving to suppress his incriminating statements).

¹² See *id.* at 807-09 (detailing procedural history). Jacques was convicted on all charges and subsequently appealed the district court’s denial of his motion to suppress. See *id.* at 809.

¹³ See *Dickerson v. United States*, 530 U.S. 428, 433 (2000) (“A free and voluntary confession is deserving of the highest credit, because it is presumed to flow from the strongest sense of guilt . . . but a confession forced from the mind by the flattery of hope, or by the torture of fear, comes in so questionable a shape . . . that no credit ought to be given to it; and therefore it is rejected.”).

¹⁴ See *Contreras v. State*, 312 S.W.3d 566, 577 (Tex. Crim. App. 2010) (describing circuit split regarding whether threatening to arrest family member renders confession involuntary); see also *United States v. Lall*, 607 F.3d 1277, 1290-91 (11th Cir. 2010) (finding confession involuntary where officer told defendant he wasn’t pursuing charges contradicting earlier *Miranda* warnings); *Lucero v. Kerby*, 133 F.3d 1299, 1311 (10th Cir. 1998) (declaring confession voluntary even though officer lied about fingerprint evidence found in victim’s home); *United States v. Byram*, 145 F.3d 405, 407 (1st Cir. 1998) (stating confession voluntary despite police

a burglary charge and later asked for a motion to suppress his incriminating statements, claiming that the police coerced his testimony out of him.¹⁵ The Supreme Court of the United States held that the defendant's confession was voluntary and rendered admissible.¹⁶ The Court reasoned that the finder of fact must examine the surrounding circumstances and the entire course of police conduct with respect to the suspect in evaluating the voluntariness of the defendant's statements; here, the surrounding circumstances and police conduct did not conclude any coercive means.¹⁷

In *Procunier v. Atchley*, an inmate made an involuntary statement of self-incrimination and requested a motion to suppress the evidence.¹⁸ The Supreme Court held that the evidence was wrongly admitted in trial and that it was an involuntary confession; further the Court found a new trial to be unnecessary.¹⁹ The Court reasoned that the question of whether the defendant's will is overborne, so that the statement was not his free and voluntary act, the constitutionality of the statement must be resolved in light of the totality of the circumstances, and in this case the defendant's will was not overborne, making the evidence admissible in court.²⁰

Subsequently in *United States v. Rojas-Tapia*, the defendant claimed that he did not knowingly or voluntarily confess to his involvement

officer falsely assuring defendant no danger of prosecution existed); *United States v. Swint*, 15 F.3d 286, 290 (3d Cir. 1994) ("Swint was not given *Miranda* warnings; Swint's attorney was not present when the statements were made; the statements were made in the District Attorney's office in the courthouse; and the officers present were armed with their weapons clearly visible. Thus, exercising plenary review, we hold that Swint's statements on May 2, 1991, were involuntary."); *Luckhart v. State*, 736 N.E.2d 227, 229 (Ind. 2000) (deception is "not conclusive" but "weighs heavily" against finding of voluntariness).

¹⁵ *Oregon v. Elstad*, 470 U.S. 298, 302 (1985) (arguing later statement at police station constituted "fruit of the poisonous tree").

¹⁶ *See id.* at 303-04 ("A second metaphor questions whether a confession can be truly voluntary once the 'cat is out of the bag.' Taken out of context, each of these metaphors can be misleading. They should not be used to obscure fundamental differences between the role of the Fourth Amendment exclusionary rule and the function of *Miranda* in guarding against the prosecutorial use of compelled statements as prohibited by the Fifth Amendment.").

¹⁷ *See id.* at 315-18 (reasoning neither environment nor circumstances of interrogations were coercive in nature).

¹⁸ *See Procunier v. Atchley*, 400 U.S. 446, 447 (1971) ("They asked him if he would be willing to have his next conversation with the respondent electronically recorded, and, since he planned to return to get additional information for the insurance company, he agreed. Later the same day Travers returned to the jail and had another conversation with the respondent, in the course of which the respondent again gave Travers substantially the same account of the circumstances of his wife's death. This conversation was recorded. Over the objection of defense counsel, the recording of the second conversation was admitted in evidence at the trial.").

¹⁹ *See id.* at 454.

²⁰ *See id.* (detailing Court reasoning in finding confession involuntary).

in a hijacking.²¹ The First Circuit held that he voluntarily gave his confession.²² The court reasoned that his intellectual limitations did not result in a confession that was other than knowing, based on the fact that his confession was lucid and articulate.²³

Similarly, in *United States v. Sanchez*, the defendant moved to suppress incriminating involuntary statements made to law enforcement under the guise of the Fifth Amendment.²⁴ The defendant, a minor, was suspected of assault and was brought into the police station for questioning.²⁵ The Eighth Circuit held that the defendant's will was not overcome by improper police conduct, and that the evidence was admissible in court.²⁶ The court ruled that a totality of the circumstances review needs to be considered when determining if a suspect's will is overcome and elicits an involuntary confession.²⁷ The court affirmed the earlier finding that the defendant was of "average intelligence," and further noted that no evidence existed suggesting that the defendant was mentally or physically unhealthy.²⁸ The court also reasoned that the short duration of the interrogation, combined with the district court's finding that the defendant's demonstrated his ability to resist the pressure to confess at the beginning of the interview, undermined the conclusion that his mental immaturity led to an invalid confession.²⁹

²¹ *United States v. Rojas-Tapia*, 446 F.3d 1, 2-3 (1st Cir. 2006) ("Several hours into this detention, while police were asking routine booking questions, Rojas-Tapia abruptly stated that he wanted to tell them about his participation in the hijacking. Although the police reminded Rojas-Tapia that he had the right to counsel and to remain silent, he proceeded to make a detailed inculpatory statement.").

²² *See id.* at 8-10.

²³ *See id.* at 10 (finding confession voluntary despite mental capabilities of defendant); *see also Colorado v. Connelly*, 479 U.S. 157, 167 (1986) (holding coercive police action necessary to render confession involuntary). *But see Commonwealth v. Cephas*, 522 A.2d 63, 65 (Pa. Super Ct. 1987) (distinguishing waiver invalid when mental illness precludes defendant's understanding).

²⁴ *United States v. Sanchez*, 614 F.3d 876, 877 (2010).

²⁵ *See id.* at 877-81.

²⁶ *See id.* at 888.

²⁷ *See id.* at 882-83. The court evaluated the defendant's maturity, education, physical condition, and mental aptitude in determining his voluntary confession. *See id.* at 887.

²⁸ *Id.* at 887-88.

²⁹ *See Sanchez*, 614 F.3d at 888; *see also Colorado v. Connelly*, 479 U.S. 157, 169-71 (1986) (stating no issue of voluntariness when suspect's mental illness draws confession); *United States v. Boskic*, 545 F.3d 69, 80-81 (1st Cir. 2008) ("Statements obtained from defendant during the immigration interview were voluntary under the Fifth Amendment. The defendant was a well-educated, mature adult of 40 years, who had a general familiarity with the American legal system and was in good health."); *United States v. Schwensow*, 151 F.3d 650, 659 (7th Cir. 1998) (finding valid waiver because defendant was not impaired by alcohol or drugs during interview);

However, in *Brown v. Mississippi*, a defendant was brutally and violently beaten and coerced into a confession of murder.³⁰ The Supreme Court held that the defendant's confession was involuntary and violated his Fifth Amendment right against self-incrimination.³¹ The Court reasoned that use of a confession obtained by coercion, brutality, and violence is not a valid basis for conviction and sentence constituted denial of due process.³²

With regard to *Jacques*, defendant claimed officers used coercive

United States v. Turner, 157 F.3d 552, 555-56 (8th Cir. 1998) (holding valid waiver even though defendant ingested PCP and demonstrated awareness of his rights); United States v. Paredes, 139 F.3d 840, 844 (11th Cir. 1998) (claiming valid waiver because defendant had requisite mental capacity regardless of police tactics); Rice v. Cooper, 148 F.3d 747, 751-52 (7th Cir. 1998) (holding mildly mentally handicapped person validly waived rights after explained in simple terms); United States v. Male Juvenile, 121 F.3d 34, 38 (2d Cir. 1997) (finding valid waiver by defendant with attention and learning disabilities); United States v. Guay, 108 F.3d 545, 550 (4th Cir. 1997) (“[S]uspect’s broken shoulder and other accident-related injuries did not invalidate waiver; officer confirmed with hospital that suspect was not under influence of judgment-impairing medication.”); Correll v. Thompson, 63 F.3d 1279, 1288-1289 (4th Cir. 1995) (finding waiver where defendant had low I.Q. because of age, police contact and Miranda rights); Campaneria v. Reid, 891 F.2d 1014, 1020 (2d Cir. 1989) (stating valid waiver despite defendant undergoing surgery and ingesting pain medication because records showed alertness); Wernert v. Arn, 819 F.2d 613, 616 (6th Cir. 1987) (holding ingestion of drugs and alcohol day before confession did not invalidate confession); State v. Thornton, 83 So. 3d 1024 (La. 2012) (“The trial court erred in granting defendant’s motion to suppress on grounds that intoxication rendered her statements to policy involuntary because a valid waiver of Miranda rights was not a prerequisite for admitting her otherwise voluntary statements into evidence. The officers used no coercive measures in securing her statements.”). *But see* Mincey v. Arizona, 437 U.S. 385, 399-400 (1978) (“[C]onfession in hospital involuntary because defendant connected to at least 6 tubes, repeatedly requested presence of counsel, complained of excruciating pain, and nodded off at various times during 4-hour interrogation.”); United States v. Preston, 751 F.3d 1008 (9th Cir. 2014) (“Use at trial of intellectually disabled 18-year-old’s confession violated Due Process Clause because circumstances—including defendant’s severe intellectual impairment, repetitive questioning, deception as to use of statement, suggestive questioning, and false promises of leniency and confidentiality—established that statement was involuntary.”); United States v. Taylor, 736 F.3d 661 (2d Cir. 2013) (“Court improperly admitted defendant’s post-arrest statements because his statements were not voluntarily made since he was impaired throughout his interrogation, and his interrogators took undue advantage of that impairment by continuing to question him.”); Henry v. Dees, 658 F.2d 406, 411 (5th Cir. 1981) (“[I]nvalid waiver by mentally handicapped defendant because record demonstrated he could not understand complex waivers and consequences, and police failed to take extra precautions.”); Commonwealth v. Cephas, 522 A.2d 63 (Pa. Super. Ct. 1987) (stating defendant’s mental illness precludes him from understanding Miranda warnings, and waiver obtained is invalid).

³⁰ *Brown v. Mississippi*, 297 U.S. 278, 287 (1936).

³¹ *See id.*

³² *See id.* at 286-87 (finding constitutional violation due to police tactics in obtaining confession); *see also* *Chavez v. Martinez*, 538 U.S. 760 (2003) (upholding confession given defendant’s inchoate treatment for bullet wounds). *But see* *United States v. Abu Ali*, 395 F. Supp. 2d 338, 373-74 (E.D. Va. 2005) (finding admissible confession despite defendant’s allegations that confession was given after torture).

interrogation techniques that overbore his will in violation of the Fifth Amendment.³³ With regards to the officers threatening a harsher sentence in exchange for Jacques's cooperation, the court held that it had no impact on Jacques's conduct during the interrogation.³⁴

Next, the court analyzed whether the officer's reference to the defendant's father's health manifested any psychological or emotional anxiety in response to the officer's statements.³⁵ The court held that the defendant did not manifest any notable psychological or emotional response that would indicate that he was susceptible to manipulation.³⁶

Finally, the court analyzed the defendant's claims that his will was overborne through the officers' use of the "Reid technique," such as exaggerating their evidence and minimizing the gravity of his suspected offense in obtaining a confession.³⁷ The court held that the techniques fell

³³ United States v. Jacques, 744 F.3d 804, 809 (1st Cir. 2014).

³⁴ See *id.* at 811; see also United States v. Harrison, 34 F.3d 886 (9th Cir. 1994) (stating defendant identified threat of retaliation as reasons for confession). But see United States v. Tingle, 658 F.2d 1332 (9th Cir. 1981) (asserting confession suppressed because officers had used defendant's young daughter to coerce statement); Williams v. State, 2000 Ala. LEXIS 46 (2000) (stating slightest threat or promise of lenience renders confession inadmissible); Beavers v. State, 998 P.2d 1040, 1044-1046 (Alaska 2000) ("[W]here there is a promise of lenience, that is one factor in assessing voluntariness; but threats are closer to a *per se* rule of exclusion."); Bisbee v. State, 17 S.W. 3d 477, 481 (Ark. 2000) (rendering promise of lenience invalidates waiver if promise induced waiver); State v. Luke, 1 P.3d 795, 799 (Idaho 2000) (stating promise of lenience does not invalidate waiver, court focuses on whether there was deception); Buster v. Commonwealth, 364 S.W.3d 157 (Ky. 2012) ("The trial court erred by denying defendant's motion to suppress her written confession because the police did not scrupulously honor her right to cuff off questioning, as social worker and officer attempted to persuade defendant to reconsider her invocation of her right by allowing social worker to speak with defendant alone for half an hour.").

³⁵ See *Jacques*, 744 F.3d at 812; see also United States v. Jackson, 918 F.2d 236, 242 (1st Cir. 1990) ("[C]ircuit refused to find that a defendant's confession was involuntary on the basis of police officers' threats to charge his sister with a crime if he did not cooperate."); United States v. Jobin, 535 F.2d 154, 159 (1st Cir. 1976) (stating mere use of psychological pressure by agents does not necessarily render confession involuntary). But see Lynam v. Illinois, 372 U.S. 528, 534 (1963) ("[T]he 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,' . . . a confession made under such circumstances must be deemed not voluntary.").

³⁶ See *Jacques*, 744 F.3d at 812. But see Harris v. South Carolina, 338 U.S. 68 (1949) (finding confession involuntary based upon number of circumstances including threat to arrest suspect's mother); *Tingle*, 658 F.2d at 1336 (describing interrogation objective was to create fear when suspect was denied seeing child); Brisbon v. United States, 957 A.2d 931, 945 (D.C. App. 2008) ("[O]fficers falsely told suspect that mother and grandmother had been arrested, cautioning that the kind of deception employed here, involving supposed harm to vulnerable family members, could well cross the line beyond the type of tactics *vel non* that a court will tolerate.").

³⁷ See *Jacques*, 744 F.3d at 812; see also United States v. Hughes, 640 F.3d 428, 439 (1st Cir. 2011) ("Some aggravated types of deception or chicanery by the police may be sufficient to

safely within the realm of the permissible ‘chicanery’ sanctioned by courts.³⁸ The court concluded that the officers’ interrogative tactics did not amount to coercion in violation of the defendant’s Fifth Amendment rights.³⁹

While the court analyzed the various interrogation techniques of the officers in a systematic manner, the question of determining how far officers should go during an interrogation, presents itself.⁴⁰ Although the “Reid technique” is aimed at extracting confessions and evaluating suspect credibility, there should be a limit on how extreme the extracting techniques are allowed to be.⁴¹ Exaggerating the strength of the evidence against the defendant, misrepresenting the involvement of high-profile federal agents in the case, minimizing the magnitude of the defendant’s alleged criminal conduct, and interrupting the defendant’s attempts to deny his guilt all seem to be on the extreme end of extracting techniques.⁴²

The court decided that just because the defendant did not exude any physical reaction, once the officers mentioned his father’s health, it did not affect him in making an involuntary confession.⁴³ Physical reactions or visible emotional anxiety should not be the only measure to examine if the mentioning of a family member affected a person; specifically since many suspects of a crime may admit to whatever the police officer wants to hear, just to get back to their family.⁴⁴ Additionally, tactics that raise issues that are irrelevant to the questioning of the criminal act should not be allowed, rendering the suspect psychologically weak and susceptible to any type of questioning.⁴⁵

While the holding is not a complete departure from existing law, it is an element of the criminal process worth analyzing.⁴⁶ Although police officers must have certain interrogation tools at their disposal in order to

render a confession involuntary. But the use of chicanery does not automatically undermine the voluntariness of a confession. . . . [S]ome degree of deception on their part during the questioning of a suspect is permissible.”) (internal citations omitted).

³⁸ *Jacques*, 744 F.3d at 812.

³⁹ *See id.*

⁴⁰ *See supra* notes 33-38 (detailing court’s reasoning in finding Jacques’ confession was made voluntarily).

⁴¹ *See Jacques*, 744 F.3d at 808.

⁴² *See id.* at 808 n.8 (describing “Reid technique”).

⁴³ *See United States v. Sanchez*, 614 F.3d 876, 877 (2010).

⁴⁴ *See cases cited supra* notes 35-36 (citing cases involving psychological pressure where officers threaten defendant’s family).

⁴⁵ *See cases cited supra* notes 35-36 (illustrating how police tactics unrelated to suspected crime can be coercive).

⁴⁶ *See sources cited supra* note 1 (outlining protections of Fifth Amendment).

nudge a suspect into assuming it best to confess, the question arises of how much leverage is permissible until it infringes on a suspect's Fifth Amendment right against self-incrimination via an involuntary confession.⁴⁷ Future litigation may reasonably be anticipated on this specific step of the criminal procedure, delving into the question of how far is too far when police use various interrogation techniques.⁴⁸ While currently there is a circuit split on leniency courts will allow police officers during their interrogational techniques, eventually the Supreme Court will have to make definite guidelines that officers will need to follow, so as not to abuse their authoritative powers.⁴⁹

In *United States v. Jacques*, the court addresses the various types of coercive methods used by police to get a confession out of a suspect, and how far they can go before infringing upon a suspect's Fifth Amendment right against an involuntary confession.⁵⁰ Although the court did not completely depart from existing law, questions still arise as to how much power police should really be given with regard to their interrogation techniques.

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⁴⁷ *Cf.* *United States v. Tingle*, 658 F.2d 1332 (9th Cir. 1981) (finding officers' use of defendant's young child as leverage impermissible).

⁴⁸ *See* cases cited *supra* note 14 (outlining various cases determining issue of what constitutes permissible police interrogation tactics).

⁴⁹ *See* cases cited *supra* note 29 (illustrating circuit split).

⁵⁰ *United States v. Jacques*, 744 F.3d 804 (1st Cir. 2014).

