

State, 667 S.W.2d 130, 134 (Tex. Crim. App. 1984).

Specifically, as the videotape in this case clearly shows, the investigators repeatedly told Ms. Smith that they knew she started the fire in question, and that the only remaining question was her intent. The investigators posed alternate hypotheses. Under the first hypothesis, Ms. Smith was a nice and good person, indeed, a victim herself, who started a fire that had unfortunately escalated into a large and massively destructive fire because of unusual wind and weather conditions, and that she had no intent to hurt any one. Under the second hypothesis, Ms. Smith was a “monster,” who started the fire intending to kill many people. In the first case, Ms. Smith was guilty of a property crime, merely arson; in the second case, she was guilty of capital murder. Ms. Smith’s only hope, according to the investigators, was to confess to them that she had committed the crime, and to explain her unintentional motives, and if she did this, they would report to the prosecutors and the judge, who understood crimes of passion. If she confessed, the investigators told her, she had reason to hope for a lenient sentence, even probation. This, though, according to the prosecutors, would be her last chance to tell her story.

II.

Statements, admissions or confessions made by Ms. Smith were the product of custodial interrogation, and were not taken in compliance with Article 38.22, § 3 of the Texas Code of Criminal Procedure, nor do any of the enumerated exceptions contained in §§ 3(c) or 5 of that article apply. Nor were the statements taken in compliance with the

Fifth, Sixth, and Fourteenth Amendments of the United States Constitution, Article I, §§ 10 and 19 of the Texas Constitution or *Miranda v. Arizona*, 384 U.S. 436 (1966), and its progeny.

III.

Statements, admissions and confessions given by Ms. Smith were taken in violation of her right to counsel, and after she invoked her right to counsel, in violation of the Fifth, Sixth and Fourteenth Amendments to the United Constitution and Article I, § 10 of the Texas Constitution.

IV.

This Court has a duty under *Jackson v. Denno*, 378 U.S. 368 (1964), and Article 38.22, § 6 of the Texas Code of Criminal Procedure, to conduct a hearing in the absence of the jury to determine whether any statement, admission or confession allegedly made by defendant was made voluntarily. If the statement is found to have been made voluntarily, the Court must enter an order stating this, along with specific findings of fact upon which this conclusion is made. Additionally, hearings on the admissibility of confessions shall in all cases be held outside of the hearing of the jury. Tex. R. Evid. 104(c).

V.

The defense requests the Court to instruct the prosecution to ask no question in the presence of the jury concerning statements, admissions and confessions, whether written or oral, allegedly made by Ms. Smith, until the requested hearing is held with findings of

fact and conclusions of law by the Court.

Respectfully submitted:

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CERTIFICATE OF SERVICE

I certify that a copy of the Motion To Suppress Written Or Oral Statements Of Defendant has been delivered to the Bexar County District Attorney's Office, 101 W. Nueva St, San Antonio, Texas, on July 15, 2018.

MARK STEVENS

ORDER

On this the _____ day of _____, 2018, came on to be considered defendant's Motion To Suppress Written Or Oral Statements Of Defendant, and said Motion is hereby

(GRANTED) (DENIED).

PRESIDING JUDGE