

Admissibility of Hypnotically Refreshed Recall

United States Supreme Court Decision

ROCK v. ARKANSAS, 483 U.S.44 (1987) (Defendant's Right to Testify after Hypnosis)

The Defendant, Vickie Lorene Rock, was charged with manslaughter in the shooting death of her husband during a domestic dispute involving a .22 caliber single-action revolver.

She claimed that during the ensuing struggle her husband had pushed her against a wall, and she had grabbed the gun from a nearby corner table and told him to stop hitting her. Unable to clearly recall the details of the fatal shooting, the Defendant agreed with her attorney's recommendation to undergo hypnosis in an attempt to refresh her memory. The Defendant was hypnotized twice by a neuropsychologist trained in hypnosis, but she was unable to relate any additional information about the shooting during either tape-recorded session. However, after the hypnosis sessions, the Defendant recalled that the handgun had accidentally discharged when her husband grabbed her arm during a scuffle while she had her thumb on the hammer, although her finger was not on the trigger. Based on this new information, her attorney arranged for a firearms expert to examine the single-action revolver, and this expert examination revealed the firearm was defective and prone to fire, when hit or dropped, without pulling the trigger.

Upon learning about the Defendant's hypnosis, the prosecutor filed a pretrial motion to exclude her hypnotically refreshed testimony at trial. The trial court granted the prosecutor's motion and issued an order limiting the Defendant's trial testimony to "matters remembered and stated to the examiner prior to being placed under hypnosis." At trial, the Defendant was permitted to testify only to her pre-hypnosis recall, as reflected in handwritten notes made by the hypnotist. Although the defense presented the testimony of the firearms examiner who concluded the revolver was defective, the jury was not permitted to hear the Defendant's version of the accidental shooting. Vickie Lorene Rock was convicted of manslaughter by the jury and sentenced to imprisonment for 10 years. Her subsequent appeal, based upon her claim that limitation of her trial testimony to her pre-hypnosis recall violated her right to present her own defense, was denied by the Arkansas Supreme Court, which adopted a per se rule excluding post-hypnosis testimony - even by a defendant - and held that "the dangers of admitting this kind of testimony outweigh whatever probative value it may have." *Rock v. State*, 288 Ark. 566,573(1986). A petition for writ of certiorari was subsequently filed with the U.S. Supreme Court.

On June 22, 1987, the U.S. Supreme Court reversed the Arkansas Supreme Court and held that Arkansas' per se rule excluding all hypnotically refreshed testimony impermissibly infringed upon the right of a criminal defendant to testify on her own behalf and violated the 5th, 6th and 14th Amendments to the U.S. Constitution. After reviewing the case law regarding hypnosis and the dangers of using hypnosis for memory enhancement, the Court noted that the Defendant's post-hypnosis recall of the accidental shooting was corroborated by the testimony of the firearms expert regarding the defective condition of the gun. Moreover, the tape-recordings of the hypnosis sessions provided a means to evaluate the hypnosis and led the trial judge to conclude that the hypnosis sessions were not unduly suggestive. These circumstances present an argument for the admissibility of the Defendant's testimony in this case that must be considered by the trial court on remand.

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