



IN THE SUPREME COURT OF THE STATE OF DELAWARE

LUIS COELLO,)	
)	
Defendant Below,)	
Appellant,)	
)	No. 50, 2024
v.)	
)	
STATE OF DELAWARE,)	
)	
Plaintiff Below,)	
Appellee.)	

APPELLANT’S OPENING BRIEF

ON APPEAL FROM THE SUPERIOR COURT IN AND FOR KENT
COUNTY

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NATURE AND STAGE OF THE PROCEEDINGS

On January 3, 2023 Luis Coello (“Coello”) was indicted on charges of vehicular homicide second degree, vehicular assault first degree and driving at unreasonable speed. A9.

On June 7, 2023, Coello filed a motion to suppress statements made on scene as well as any and all evidence recovered or derived from his custodial interrogation. A11. The State responded on July 11, 2023 and a suppression hearing was held on July 13, 2023. D.I. #30. At the conclusion of the hearing, the court denied Coello’s motion to suppress for the reasons stated on the record. (See oral ruling attached as Ex. A).

A three-day jury trial commenced on September 6, 2023. At the conclusion, Coello was convicted on all counts. D.I. #46.

Coello was sentenced on January 9, 2024, to 11 years at Level 5, followed by various levels of probation. (See sentence order as Ex. B). Coello filed a timely Notice of Appeal. This is his Opening Brief as to why his convictions must be reversed.

SUMMARY OF THE ARGUMENT

1. The Superior Court erred in refusing to suppress Defendant's incriminating un-*Mirandized* statements, because police obtained the statements in violation of the Fifth Amendment to the United States Constitution and Article One, Section Seven of the Delaware Constitution. The State failed to demonstrate Defendant waived his rights, either explicitly or implicitly. Moreover, Defendant's difficulty comprehending the English language prevented him from waiving his rights with full awareness of the nature of the right abandoned and the consequences of abandoning it. This Court should remand this case to the Superior Court for a new trial in which the alleged confession and evidence derived is excluded. Reversal is now required.

STATEMENT OF THE FACTS

On June 22, 2022, at approximately 4:14 a.m. a 911 call was received requesting medical attention behind Del-One located at 150 East Water Street. The caller, later identified as Luis Coello, attempted to explain to the 911 operator his back and head were broken in an accident but he could not remember what had happened. Coello is a native Spanish speaker. He understands some English and can speak a few words of English but relies on an interpreter for in depth English conversations. During the call, Coello can be heard yelling to police, “I need help.”¹

Officer Jacob Miller (“Miller”) of the Dover Police Department was dispatched to the scene. A33. The crash site was near St John’s River. Upon arrival at the scene, Miller made contact with Coello who was lying on the ground and appeared injured and in obvious pain. A34. EMS were called to the scene to attend to Coello and the other passengers at the crash site. A38. Coello, who spoke very broken English, mentioned that three people may have been involved. A40. The EMT’s established among themselves whether there were any Spanish speakers amongst the medical personnel on the scene who could assist Coello. A44. As additional officers responded to the scene it became apparent that a Jeep had gone off the road, and ended up

¹ Facts derived from recording of 911 call.

by the embankment. A49. Due to the obvious language barrier, some of the officers attempted, unsuccessfully, to use Google translate in an effort to communicate with Coello. A54.

At the suppression hearing, the body-worn camera (“BWC”) footage from the officers at the scene of the accident was also entered into evidence. A27. After approximately 4 minutes with the unidentified officer, Officers Braun and Strickland approach Coello and Braun begins questioning him about specific details of the accident. Coello is positioned with his back to the hood of the patrol vehicle while the unidentified officer is to his right, Strickland is to his left and Braun is directly in front of him. Coello advised “I feel pain” and “English is no good, only speak Spanish.” At no time was a Spanish interpreter provided to aid Coello on scene. At no time on any BWC did Braun or any other officer issue Coello his *Miranda* rights.

Braun continued to verbally question Coello in English for some time despite his repeatedly advising he did not remember, he needed help and he spoke Spanish. Among the questions Braun asks are “who was driving?”, “were you driving?”, “whose car is that?” and “is that your car?” Coello answered in the affirmative every time until he is being treated by EMS.

Given the Superior Court’s denial of Coello’s motion to suppress, the State was permitted at trial to present Coello’s answers to the Officers and

any reference to his admission of driving the vehicle in question. As a result, the statements and all evidence derived from Coello's statements formed the basis of the State's case-in-chief, and as a result, Coello was convicted of all counts charged.

- I. HE SUPERIOR COURT ERRED IN REFUSING TO SUPPRESS COELLO'S ADMISSIONS POLICE OBTAINED IN VIOLATION OF HIS PRIVILEGE AGAINST SELF-INCRIMINATION GUARANTEED BY THE FIFTH AMENDMENT OF THE UNITED STATES CONSTITUTION AND ARTICLE ONE, SECTION SEVEN OF THE DELAWARE CONSTITUTION, WHERE THE MIRANDA WARNINGS WERE NOT ADMINISTERED, COELLO DID NOT IMPLICITLY OR EXPLICITLY WAIVE HIS RIGHTS, AND HE DID NOT COMPREHEND THE NATURE OF THE RIGHT ABANDONED.**

Question Presented

Did the Superior Court err in concluding Defendant knowingly, intelligently, and voluntarily waived his *Miranda* rights, where he made incriminating statements elicited while in police custody and Defendant did not implicitly or explicitly waive his rights, nor fully comprehend the nature of the right abandoned due to a language barrier and his physical and mental state at the time? The issue was preserved by defense counsel's motion to suppress. A11.

Standard and Scope of Review

Alleged constitutional violations and legal conclusions regarding the denial of a motion to suppress are reviewed *de novo*.² Factual findings on a motion to suppress are reviewed to determine whether there is sufficient

² *Taylor v. State*, 260 A.3d 602, 612 (Del. 2021).

evidence to support the findings and whether those findings were clearly erroneous.”³

Argument

The United States and Delaware Constitutions embody the privilege against self-incrimination. This privilege stems from the following principle:

[O]ur accusatory system of criminal justice demands that the government seeking to punish an individual produce the evidence against him by its own independent labors, rather than by the cruel, simple expedient of compelling it from his own mouth.... [T]he privilege is fulfilled only when the person is guaranteed the right ‘to remain silent unless he chooses to speak in the unfettered exercise of his own will’.

Miranda v. Arizona, 384 U.S. 436, 460 (1966) (internal citations omitted).

Moreover, “our system of criminal justice is based upon the fundamental principle that effective law enforcement cannot depend on ‘the citizens’ abdication through unawareness of their constitutional rights.’” *Liu v. State*, 628 A.2d 1376, 1380 (Del. 1993) (quoting *Escobedo v. Illinois*, 378 U.S. 478, 490 (1964)).

In *Miranda*, the United States Supreme Court devised a set of warnings “designed ‘to assure that the individual's right to choose between silence and speech remains unfettered throughout the interrogation

³ *Id.*

process.” *DeJesus v. State*, 655 A.2d 1180, 1190 (Del. 1995)(citing *Miranda*, 384 U.S. at 469). A suspect “must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires.” *Miranda*, 384 U.S. at 479. “If the police take a suspect into custody, and interrogate him without advising him of his fifth amendment rights, his answers cannot be introduced into evidence at a subsequent trial to establish the suspect's guilt.” *DeJesus*, 655 A.2d at 1190 (citing *Berkemer v. McCarty*, 468 U.S. 420, 429 (1984)).

“It is undisputed that the Delaware Constitution may provide broader protections than the United States Constitution.” *Bryan v. State*, 571 A.2d 170, 177 (Del. 1990) (citing *Van Arsdall v. State*, 524 A.2d 3, 7 n.5 (Del. 1987)). Coello respectfully suggests that Article One, Section Seven of the Delaware Constitution should be construed to provide more protection than the Fifth Amendment in the present case. Specifically, he urges this Court to adopt the “explicit waiver” standard that has been adopted under the Pennsylvania Constitution.

Under the Pennsylvania Constitution, “a waiver of Miranda rights must be explicit in order to be effective.” *Commonwealth v. Bussey*, 404

A.2d 1309, 1314 (Pa. 1979). An explicit waiver of Miranda rights is defined as an “outward manifestation of a waiver such as an oral, written or physical manifestation.” *Id.* at n.11. The Court created this requirement to “promote certainty in knowing an accused has waived his rights,” *id.*, “avoid a mountain of litigation which might otherwise result from trying to determine what ‘implicitly’ went on in an accused's mind,” *id.*, and “serve to impress on an accused the importance of his decision.” *Id.* Further, the Court stated this rule would not “create [] any [] burden,” *id.* at 1315, for the police, as “merely asking for an answer to a question is no great burden, and, even if it is a burden, it will promote certainty in the law and, thereby, eliminate a greater burden resulting from allowing implicit waivers.” *Id.*

The text of Article One, Section Seven differs from the text of the Fifth Amendment. “Delaware ratified the Bill of Rights to the United States Constitution on January 28, 1790. Pennsylvania adopted a new state constitution in 1791. Delaware adopted a new constitution in 1792.... Some portions showed that the [Delaware] members were familiar with the [1791] [C]onstitution of Pennsylvania.” *Jones v. State*, 745 A.2d 856, 865-66 (Del. 1999) (citing *State v. Hunt*, 450 A.2d 952, 962-66 (Del. 1982)(internal citations omitted). Notably, the language of the self-incrimination clause in the Delaware Constitution resembles the language in the Pennsylvania

Constitution, rather than the United States Constitution, indicating the framers intended to provide broader protection under Article One, Section Seven than is provided under the Fifth Amendment. See generally Randy J. Holland, *The Delaware State Constitution: A Reference Guide* (2002) (examining distinctions between protections provided under the United States and Delaware constitutions).

Delaware case law also indicates Article One, Section Seven provides more protection than the Fifth Amendment. This Court has consistently construed Article One, Section Seven of the Delaware Constitution as providing greater protection for individual rights than is afforded under the Fifth Amendment. See, e.g., *Rambo v. State*, 939 A.2d 1275, 1280 (Del. 2007) (“[T]he Delaware Constitution offers more protection to defendants than does federal law.”); *Garvey v. State*, 873 A.2d 291, 296 (Del. 2005) (“Under the Delaware Constitution, unlike its federal counterpart, ‘if a suspect attempts to invoke [his or her] Miranda rights during an interrogation, but does not do so unequivocally, the police must clarify the suspect's intention before continuing with the interrogation.’”)

Because custodial interrogations are inherently coercive, any statement by a witness in custody is presumptively involuntary in the absence of certain procedural safeguards. This venerated principle of law

was established in *Miranda*⁴ in cases involving the custodial interrogations of suspects who are actually under arrest. In those situations, unless the procedural safeguards established by *Miranda* are adhered to, any statement by the accused cannot be admitted into evidence.

The principles and rationale for the holding in *Miranda* were reaffirmed by the United States Supreme Court in *J.D.B. v. North Carolina*.⁵ As the High Court expressed:

By its very nature, custodial police interrogation entails “inherently compelling pressures.” Even for an adult, the physical and psychological isolation of custodial interrogation can “undermine the individual's will to resist and ... compel him to speak where he would not otherwise do so freely.”...Recognizing that the inherently coercive nature of custodial interrogation “blurs the line between voluntary and involuntary statements,” this Court in *Miranda* adopted a set of prophylactic measures designed to safeguard the constitutional guarantee against self-incrimination. Prior to questioning, a suspect “must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed.” And, if a suspect makes a statement during custodial interrogation, the burden is on the Government to show, as a “prerequisit[e]” to the statement's admissibility as evidence in the Government's case in chief, that the defendant “voluntarily, knowingly and intelligently” waived his rights. *Id.*

⁴ *Miranda*, 384 U.S. at 444.

⁵ *J.D.B. v. North Carolina*, 564 U.S. 261, 269-70 (2011) (internal citations omitted).

For those same reasons, this Court in *Taylor* held that *Miranda's* procedural safeguards also apply to the interrogation of a witness who is in custody. *Taylor v. State*, 23 A. 3d 851, 855 (Del. 2011). In *Taylor*, this Court held that statements obtained through custodial interrogation absent the procedural safeguards recognized in *Miranda v. Arizona* are presumptively involuntary and thus inadmissible.⁶ The Court reasoned:

Absent uniform treatment for the custodial interrogation of both a defendant who is actually under arrest and a witness who believes he is under arrest, the evidentiary results are unfairly and inexplicably inconsistent. The defendant's self-incriminating statement would be inadmissible, yet the §3507 statement of a witness that incriminates a third-party would be admitted into evidence. That is not how the rule of law should or does operate under our constitutional democracy. In both situations, the custodial interrogations are inherently coercive and both types of statements are inadmissible if the procedural safeguards of *Miranda* are not followed. That must be so, since the concerns that animate *Miranda* are identical in both cases.⁷

A *Miranda* waiver must be “made voluntarily, knowingly and intelligently,” *Miranda*, 384 U.S. at 444, to be admissible. The State bears the burden to prove a defendant's waiver was voluntary, knowing, and intelligent. *See Garvey*, 873 A.2d at 296. To determine whether an out-of-court statement is voluntary, the Court must consider whether, “under the

⁶ *Id.* at 854-855, citing *Miranda v. Arizona*, 384 U.S. 436, 444 (1966).

⁷ *Id.* at 856.

totality of the circumstances, the witness' statements were the product of a rational mind and free will.” *Martin v. State*, 433 A.2d 1025, 1032 (Del.1981)). To do so, the Court should focus on: “the behavior of the interrogators, as well as the mental/physical makeup of the individual being interrogated, to determine whether the individual's will was so overborne that the statements produced were not the product of a rational intellect and free will.” *Id.* A statement is involuntary if “the totality of the circumstances demonstrate that the witness's will was overborne.” *Taylor*, 23 A.3d 851 at 853. See also, *Baynard v. State*, 518 A.2d 682, 690 (Del. 1986). The State bears the burden of proving voluntariness by a preponderance of the evidence. *Roth v. State*, 788 A.2d 101, 107-108 (Del. 2001).

Here, the record reflects that Coello’s out-of-court statements were not voluntary. It is indisputable that Coello was in custody when he was questioned on the morning of June 22, 2022. At the time police elicited Coello statements, the BWC footage supports the aforementioned. Once Coello was approached by officers Braun and Strickland so that he was surrounded on three sides by officers with a patrol vehicle at his back, he was no longer free to leave by any reasonable person standard and therefore in custody. As Braun continued to question him, Coello was subject to custodial interrogation.

More significantly, the full BWC footage highlights Coello's lack of awareness and understanding. Coello is Hispanic and has difficulty speaking and understanding the English language. He expressed repeatedly that he does not speak English and he only speaks Spanish. Nonetheless, as evidenced in the video, Coello is continuously asked the same questions in English and as Braun testified, his answers to those questions were unresponsive. He wasn't answering the questions that were asked. A55. That evidences the fact that he wasn't, in fact, understanding what was taking place. Nothing that he was responding was an intelligent response to the questions being asked. Coello wasn't voluntarily making statements that could be considered incriminating. Moreover, he did not possess "the requisite level of comprehension" for a "knowing" and "intelligent" waiver. *Moran v. Burbine*, 475 U.S. 412, 421 (1986). Coello was clearly vulnerable and at the mercy of the officers surrounding him.

The BWC footage further supports the conclusion that Coello's un-*Mirandized* statements were not made voluntary, intelligently and knowingly. This is supported by the fact that Cuello was in such a state of mind, given his physical condition and injuries, that he lacked the requisite cognitive state to voluntarily provide information or answer questions. He lacked the mental and physical capacity at the time due to the extreme

physical discomfort and injury from the crash itself. Here, the incriminating statements were not the product of a free and unconstrained choice by its maker. Since Coello's will had been overborne and his capacity for self-determination critically impaired, the use of his confession offends due process. See *Colorado v. Spring*, 479 U.S. 564 (1987); *Columbe v. Connecticut*, 367 U.S. 568 (1961).

In sum, The Superior Court erred by denying Coello's motion to suppress statements made and evidence derived therefrom because they were the un-*Mirandized* product of custodial interrogation. These incriminating statements were procured in violation of the Fifth Amendment to the United States Constitution and Article One, Section Seven of the Delaware Constitution. The police failed to provide complete, clear, and unequivocal warnings before conducting interrogation. Coello could not have had full awareness of the nature of the right abandoned and the consequences of abandoning it, where the unclear warnings and his difficulty comprehending the English language combined to make it impossible for him to understand the plain import of his rights. Coello respectfully requests this Court to remand the instant case to the Superior Court for a new trial, in which his statements and evidence are suppressed.

. CONCLUSION

For the reasons and upon the authorities cited herein, the undersigned counsel respectfully submits that Luis Coello's convictions and sentences must be reversed.

Respectfully submitted,

/s/ Santino Ceccotti
Santino Ceccotti, Esquire

DATED: May 13, 2024