



IN THE SUPREME COURT OF THE STATE OF DELAWARE

LUIS COELLO,)
)
Defendant Below-)
Appellant,)
)
v.)
)
)
STATE OF DELAWARE,)
)
Plaintiff Below-)
Appellee.)

No. 50, 2024

ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF DELAWARE

STATE’S ANSWERING BRIEF

John Williams (#365)
Deputy Attorney General
Department of Justice
102 West Water Street
Dover, DE 19904-6750
(302) 739-4211 (ext. 3285)
JohnR.Williams@delaware.gov

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NATURE AND STAGE OF THE PROCEEDINGS

Appellee, the State of Delaware generally adopts the Nature and Stage of the Proceedings as contained in Appellant Luis Coello's May 13, 2024 Opening Brief.

This is the State's Answering Brief in opposition to Coello's direct appeal of his Kent County Superior Court jury convictions for three offenses.

SUMMARY OF THE ARGUMENT

- I. DENIED. After conducting a pretrial evidentiary hearing the Superior Court did not abuse its discretion in denying Luis Coello's motion to suppress his admission to the police that he was driving the Jeep involved in the single-vehicle collision. (A-83-88).

Coello was not in custody at the collision scene and no *Miranda* warnings were required. There was no coercive police behavior rendering Coello's incriminating admission to driving the vehicle involuntary. Coello also did not ambiguously invoke his right to remain silent. Since Coello was not subject to custodial interrogation before being taken to the hospital, there is no reason for Delaware to adopt the Pennsylvania "explicit waiver" standard under Del. Const. Art. I, §7.

STATEMENT OF FACTS

At 4:14 A.M. on June 22, 2022, the Dover Police Department received a 911 call requesting assistance behind the Del-One Federal Credit Union branch on 150 East Water Street, Dover concerning a single-vehicle crash. (A-47; State's Suppression Hearing Exhibit #1 [911 call recording] at 0:15-5:35). Dover Police Patrolman Jacob Miller arrived at the vehicle crash scene and observed the defendant Luis Coello lying on the ground. (A-33-34). Coello was the individual who telephoned 911 requesting assistance. (A-65).

Patrolman Miller was driving a marked police patrol vehicle, and he activated his body-worn camera upon arrival. (A-34). The video from Miller's body camera was admitted into evidence at the July 13, 2023 Suppression Hearing as State's Exhibit #2. (A-35). Miller attempted to identify Coello by requesting to see his driver's license. (A-36). Miller asked Coello how the Jeep had rolled over and travelled down an embankment behind the bank. (A-48-49). Miller also asked questions about how the Jeep ended up "down there" near the St. Jones River (A-41), and where Coello was driving from. (State's Exhibit #2 at 0:42-2:00).

After a couple of minutes, Coello grabbed his neck and began walking away from the police officer. (A-40). Patrolman Miller told Coello to "stay over here," and that an ambulance was coming for him. (State's Exhibit #2 at 2:12-2:45).

Approximately four minutes after Miller's initial contact with Coello, Dover Patrolwoman Heather Braun (who after her later marriage was identified as Heather Siebert at the 2023 Suppression Hearing [A-39]) and Patrolman Strickland appear in Miller's video and also began questioning Coello. (State's Exhibit #2 at 4:18). At the single vehicle crash scene Officer Braun noted that a Jeep had travelled down the embankment behind the Del-One branch, rolled over, and one person still inside the vehicle was receiving medical aid from the other individuals at the scene. (A-48-49).

Braun activated her police body-worn camera (A-50), and that video recording was admitted as State's Exhibit #3 at the Suppression Hearing. (A-51). Braun asked Coello if the Jeep was his vehicle and if he was driving. (A-57). Coello answered "yes" to some of the policewoman's inquiries. (A-57).

Initially, Braun asked Coello where he was going, but Coello gave an unresponsive answer. When she asked the question again, Coello responded: "where your going." Coello told the police officers his English was not very good. (State's Exhibit #3 at 0:20-0:41). Using a Google Translate site on a cellphone, Braun next asked Coello where he worked. (State's Exhibit #3 at 0:42-3:50).

Patrolwoman Braun also asked Coello "this is your car" and "you were driving" and Coello answered yes to both questions. (State's Exhibit #3 at 4:53-4:58). Coello was not handcuffed by any of the police officers that morning. (A-45,

52). After Patrolman Strickland helped Coello sit down, Braun pointing to the crashed vehicle asked Coello “your car” and “you drive it,” and Coello appeared to answer in the affirmative by nodding his head to the questions. (State’s Exhibit #3 at 7:17, 9:30-9:36). However, when an EMT arrived to transport Coello by ambulance to the hospital (A-52), Coello then said, “I’m not driving the vehicle.” (A-57).

Since the other individual in the Jeep died (A-55), the follow-up police investigation was turned over to the collision reconstructionist Corporal Mast. (A-53, 55).

ARGUMENT

I. THE SUPERIOR COURT PROPERLY DENIED COELLO’S MOTION TO SUPPRESS EVIDENCE.

Question Presented

Whether the Superior Court abused its discretion in denying defendant Coello’s pretrial motion to suppress?

Standard and Scope of Review

“ [This Court] appl[ies] a mixed standard of review to a trial court’s order (A-83-88) denying a motion to suppress evidence after an evidentiary hearing.”¹ The denial of a motion to suppress evidence is reviewed for an abuse of discretion.² Findings of fact are reviewed for clear error, but legal determinations are reviewed *de novo*.³

Merits of the Argument

In this direct appeal of his three Superior Court jury convictions (A-7), Luis Coello argues that the trial judge abused his discretion in denying the defense pretrial motion to suppress his June 22, 2022 out-of-court oral statements (A-11-22) made

¹ *McDougal v State*, __ A.3d __, 2024 WL 1207060, at *6 (Del. Mar. 21, 2024) (citing *Garnett v. State*, 308 A.3d 625, 641 (Del. 2023)).

² *Juliano v. State*, 254 A.3d 369, 376 (Del. 2020); *Culver v. State*, 956 A.2d 5, 10 (Del. 2008).

³ *Garnett*, 308 A.3d at 641 (citing *Lopez-Vazquez v. State*, 956 A.2d 1280, 1285 (Del. 2008)); *Banther v. State*, 823 A.2d 467, 486 (Del. 2003)).

to two Dover Police officers investigating an early morning single-vehicle fatal crash. (A-83-88). Coello claims that he was in police custody (Opening Brief at 13) when three Dover Police officers arrived at the vehicle crash scene in response to his 911 telephone call (A-33, 65), and began questioning him about how the Jeep had rolled over down an embankment at the Water Street Del-One bank. (A-36, 48-49). He further contends, “[b]ecause custodial interrogations are inherently coercive, any statement by a witness in custody is presumptively involuntary in the absence of certain procedural safeguards.” (Opening Brief at 10).

Coello asserts that he was subject to custodial interrogation (Opening Brief at 13) before he was removed from the motor vehicle crash scene and transported by ambulance to the hospital for treatment of his medical injuries. (A-52). Since he did not receive any police warnings as required by *Miranda v. Arizona*,⁴ before he admitted driving the Jeep in which the passenger, Jorge Villadares-Vargas, was killed (A-9), the out-of-court statements were involuntary and should have been suppressed after the July 13, 2023 suppression hearing. (A-31-88). Coello additionally argues that he did not knowingly and intelligently waive his right to remain silent before his out-of-court statements were video recorded on two police body-worn cameras. (A-34, 50). Finally, Coello urges this Court to adopt an

⁴ 384 U.S. 436, 460 (1966).

expansive interpretation of Del. Const. Art. I, §7 to require application of the “explicit waiver” standard utilized under the Pennsylvania State Constitution.⁵ (Opening Brief at 8).

At the commencement of the July 13, 2023 suppression hearing, the court advised the parties that he had already listened to the CD of Luis Coello’s June 22, 2022 911 telephone call (A-65), State’s Exhibit #1, and viewed the videos taken by the two police body-worn cameras at the motor vehicle crash scene, State’s Exhibits #2 and 3. (A-26-27). The State presented testimony from two Dover Police officers dispatched to the accident scene. (A-30-56). Although the pretrial evidentiary hearing was conducted to consider the June 7, 2023 defense motion to suppress the accused’s prior out-of-court statements (A-11-22), the defendant did not testify at the hearing in support of his suppression motion. (A-56). After hearing oral argument from counsel (A-56-82), the judge recessed the hearing (A-82-83), and returned later that afternoon to deliver his bench ruling on the defense suppression motion. (A-83-88).

⁵ See *Commonwealth v. Bussey*, 404 A.2d 1309, 1314 (Pa. 1979)(4 to 2 plurality opinion). But see *Commonwealth v. Clemons*, 200 A.3d 441, 472 n. 8 (Pa. 2019) (“...as a plurality opinion, *Bussey* is not a binding precedent. ...A majority of this Court never has adopted *Bussey* plurality’s rule.”); *Commonwealth v. Boman*, 826 A.2d 831, 843 n. 13 (Pa. 2003) (*Bussey* nonbinding); *Commonwealth v. Baez*, 21 A.3d 1280, 1283 (Pa. Super. 2011)(“...*Bussey* is non-precedential because it is a plurality opinion.”)

After hearing the evidence presented at the suppression hearing, the court denied the motion, ruling:

First, Mr. Cello contends that he should have been administered his *Miranda* rights because, by the time three officers were present during his questioning, the detention transformed into a custodial interrogation. For *Miranda* to apply, a defendant must be in custody and the questioning must rise to the level of an interrogation. A person is in custody when, after considering the totality of the circumstances, a reasonable person, in the defendant's position, would feel a restraint on his freedom of movement to the degree associated with a formal arrest.

This case involved an investigation at a very serious accident scene. When considering Delaware Supreme Court authority such as the *Loper* decision, the *Laury*, L-A-U-R-Y, decision, and the *Hammond* decision, there was no custodial detention here.

(A-83-84).

The hearing judge then quoted this Court's 1969 decision that effective police investigation of an accident scene, as existed in Coello's case, does not have to be done "under the restrictions of the *Miranda* rules."⁶ (A-84-85). The Superior Court found that Coello was not in custody while the Dover Police were investigating the fatal motor vehicle crash scene in response to Coello's 911 call.⁷ (A-85). Likewise, "...under the totality of the circumstances, custody status was lacking, and *Miranda* was therefore not triggered." (A-85).

⁶ *Laury v. State*, 260 A.2d 907, 908 (Del. 1969).

⁷ See *DeJesus v. State*, 655 A.2d 1180, 1191 (Del. 1995)(defendant not in police custody when questioned at the hospital).

Once the Superior Court determined Coello was not in police custody at the motor vehicle crash scene, he was not subject to custodial interrogation, and *Miranda* warnings were not required in this medical emergency situation (A-83-85), the remaining suppression challenges to the defendant's out-of-court statements were quickly resolved. An analysis of whether Coello's videotaped statements were knowing and voluntary was unnecessary "...when a *Miranda* waiver is not involved. Given no custody and no requirement for *Miranda*, the analysis does not appropriately go in that direction." (A-85).

In addition, "any language barrier issues, unresponsiveness to question issues, and the impact of Mr. Coello's injuries on the accuracy of any of his statements will be matters to be considered by the jury when weighing his statements." (A-86). The hearing judge correctly concluded that these ancillary defense challenges did not affect the admissibility of the out-of-court statements, but rather concerned the weight of that evidence in the eyes of the jury as the ultimate finder of fact.

Relatedly, after observing the body-worn camera videos of Coello at the accident investigation scene, the hearing judge, "...after observing the exchange between the officers and Mr. Coello, the Court finds no coercive behavior by the police." (A-87). No due process violation was found "based on involuntariness." (A-87). As to the defense claim that there was an ambiguous invocation of the right

to remain silent (A-87), the c again correctly found that “...under the totality of the circumstances, nothing Mr. Coello said or did indicated to the police that he was ambiguously asserting his right to counsel or to remain silent.” (A-88).

At the suppression hearing the court’s findings of fact were based upon competent evidence and were not clearly erroneous. The court applied the appropriate legal analysis, including the *Laury* decision. Finally, there was no abuse of discretion in denying the defense pretrial evidence suppression motion. (A-88).

All of Coello’s appellate suppression contentions are based on an assertion that Coello was in custody at the scene of the fatal motor vehicle crash and that his videotaped incriminating admissions that he was the driver of the overturned Jeep in which the passenger died were made in response to custodial interrogation by two Dover Police Officers. Both assertions are unsupported by the evidence and are incorrect.

This was not a traffic stop case. The police were responding to a 911 call made by Coello (A-65) for emergency medical assistance after a single-vehicle crash. The police and emergency medical personnel responded to the motor vehicle crash scene. (A-48-49, 52). One person, the decedent Jorge Villadares-Vargas (A-9), was still inside the Jeep receiving medical aid when Dover Policewoman Heather Braun Siebert arrived at the scene. (A-49). The other occupant of the Jeep, Luis Coello,

was lying on the ground when Patrolman Jacob Miller arrived. (A-33-34). Coello was never handcuffed at the crash scene (A-45, 52), and he was taken from the accident location to the hospital by ambulance. (A-52).

“In order for a court to conclude that a suspect is in custody, it must be evident that, under the totality of the circumstances, a reasonable man in the suspect’s position would feel a restraint on his freedom of movement fairly characterized as that ‘degree associated with formal arrest’ to such an extent that he would not feel free to leave.”⁸ Coello was not in police custody at the motor vehicle crash scene. When Dover Patrolman Jacob Miller arrived on the scene Coello was lying on the ground. (A-33-34). After Coello stood up he appeared “in obvious pain,” and Officer Miller asked him to sit down to avoid any further injury. (A-36).

Miller asked Coello for his driver’s license, and explained: “[t]hat’s standard for any time that there’s a crash investigation, which obviously, he is the only person I have seen at this point and the vehicle being laid down in the ditch, I’m assuming this is his vehicle. That is why I’m asking him for his ID at this time.” (A-36). Next, Miller asked Coello “if he can stay in this area or come back here” because “it’s still

⁸ *Torres v. State*, 1992 WL 53406, at *2 (Del. Feb. 7, 1992) (quoting *United States v. Phillips*, 812 F.2d 1355, 1360 (11th Cir. 1987)). See also *Loper v. State*, 8 A.3d 1169, 1176 (Del. 2010); *McAllister v. State*, 807 A.2d 1119, 1126 (Del. 2002); *DeJesus v. State*, 655 A.2d 1180, 1191 (Del. 1995).

a crash investigation.” (A-37). An ambulance then arrives (A-38), and Miller is notified “that they have somebody down at the crash site.” (A-38). At approximately four and a half minutes into Miller’s body-worn camera video two other Dover Police officers arrive. (A-39). At eight minutes into Miller’s video Officer Strickland asks if another ambulance is coming. (A-39). Finally, at fifteen and a half minutes into Miller’s video, Coello starts walking away and he mentions three people. (A-40).

Coello was never handcuffed by the police (A-45,52), and he left the crash scene by ambulance bound for the hospital. (A-52). This was not an investigation where Coello was handcuffed and detained at the scene by being placed in a police vehicle.⁹ Likewise, Coello’s out-of-court statements did not occur in a custodial setting such as the police station.¹⁰ Coello’s questioning at the crash scene before he was taken away in an ambulance was not custodial interrogation because Coello was not in police custody while his out-of-court statements were being video recorded.

⁹ Compare *State v. Ishola*, 2023 WL 569465, at 3 (Del. Super. Jan. 20, 2023)(parties agree that defendant was in custody when he was handcuffed and placed in a police vehicle).

¹⁰ See *Marine v. State*, 607 A.2d 1185, 1192 (Del. 1992); *Shellinger v. State*, 2000 WL 1587950, at *1 (Del. Oct. 18, 2000).

Miranda warnings were not required under the circumstances of Coello’s case. “For *Miranda* to apply, the defendant must be: (i) in custody or in a custodial setting, and (ii) the questioning must rise to the level of an interrogation.”¹¹ Neither circumstance was present in Coello’s case. As noted, this was not a motor vehicle stop; rather, the police were dispatched to a vehicle crash scene in response to a 911 call made by the defendant. (A-65). Even if this had been a police motor vehicle stop, “[t]he United State Supreme Court held that the ‘noncoercive aspect of ordinary traffic stops prompts us to hold that persons temporarily detained pursuant to such stops are not ‘in custody’ for purposes of *Miranda*.”¹² As this Court has held, when the police are performing a preliminary investigation and merely conducting a general interrogation, the requirements of *Miranda* are inapplicable.¹³

Coello argues that his out-of-court statements recorded on the police body-worn cameras should be considered involuntary because of his “lack of awareness and understanding” and because he “is Hispanic and has difficulty speaking and understanding the English language.” (Opening Brief at 14). As a result of these

¹¹ *Loper v. State*, 8 A.3d 1169, 1176 (Del. 2010) (citing *McAllister v. State*, 807 A.2d 1119, 1123-26 (Del. 2002)).

¹² *Loper*, 8 A.3d at 1176 (quoting *Berkemer v. McCarty*, 468 U.S. 420, 440 (1984)).

¹³ *Laury v. State*, 260 A.2d 907, 908 (Del. 1969).

personal circumstances, Coello claims he lacked sufficient comprehension to make a knowing and intelligent waiver of his *Miranda* rights. (Opening Brief at 14).

The Superior Court correctly rejected this basis for suppression of the prior out-of-court statements. (A-85-86). Since Coello was never given *Miranda* warnings when the police were investigating a single-vehicle crash scene in response to the defendant's 911 call, there was no factual predicate necessitating a determination of whether Coello made a knowing, intelligent and voluntary waiver of his rights when he never received any *Miranda* warnings at the crash scene. As the hearing judge pointed out, no voluntariness analysis is required here "when a *Miranda* waiver is not involved." (A-85).

In Coello's situation where he was not in custody, was not subject to custodial interrogation, and did not receive *Miranda* warnings, a voluntariness challenge was more properly a question of the weight of the evidence rather than its admissibility. Language barrier issues, unresponsiveness to questions, and the possible impact of physical injuries were all "matters to be considered by the jury when weighing his statements." (A-86). The question of voluntariness of the out-of-court statements concerns weight of the evidence, not whether the evidence is admissible. In this connection, the Superior Court, after reviewing the police body-worn video evidence, found "no coercive behavior by the police." (A-87). There was "no due

process violation in admitting the statement and evidence based on involuntariness.” (A-87).

Similarly, Coello did not make any ambiguous invocation of his right to remain silent because in the absence of any *Miranda* warnings he was never called upon to assert or waive any rights. (A-87-88). As the court noted, “nothing Mr. Coello said or did indicated to the police that he was ambiguously asserting his right to counsel or to remain silent.” (A-88). There was simply no invocation here, ambiguous or otherwise.

Finally, in the absence of any custodial interrogation or police giving *Miranda* warnings, there is no reason for this Court to adopt an “explicit waiver” standard under the Delaware Constitution. (Opening Brief at 8). That argument is not ripe for determination under the facts of this encounter with the police. This court normally does not give advisory opinions, and any decision about an expansion of Del. Const. Art. I, §7 would only be *dicta* in this case. The Pennsylvania State Constitutional decisions have sparked debate,¹⁴ and no such academic consideration is required here.

¹⁴ See Comment, “State Constitutional Law-Self-Incrimination-Supreme Court of Pennsylvania Protects Non-Testifying Defendants’ Pre-Arrest Silence from Prosecutor Comments Inferring Guilt at Trial,” 69 Rutgers L. Rev. 1495 (2017).

The fact that Coello purports to raise a constitutional claim for the first time on appeal is of no moment. This Court has “previously refused to review constitutional arguments raised for the first time on appeal.”¹⁵

This Court expressed its concern over presenting arguments for the first time on direct appeal, stating, “[w]e place great value on the assessment of issues by our trial courts, and it is not only unwise, but unfair and inefficient, to litigants and the development of the law itself, to allow parties to pop up new arguments on appeal they did not fully present below.”¹⁶ The reason for this is clear:

Opponents should have a fair chance to address arguments at the trial court. It is prudent for the development of the law that appellate courts have the benefits that come with a full record and input from learned trial judges. Thus, fair presentation facilitates the process by with the application of rights in an individual case affects others in other cases and society in general.¹⁷

Because Coello did not fairly present his claim to the Superior Court, he has deprived the State of an opportunity to litigate the matter and the Superior Court of

¹⁵ *Shaw v. Elting*, 157 A.3d 152, 168 (Del. 2017) (citing *Cassidy v. Cassidy*, 689 A.2d 1182, 1184-85 (Del. 1997)) (other citations omitted).

¹⁶ *DFC Global Corporation v. Muirfield Value Partners, L.P.*, 172 A.3d 346, 363 (Del. 2017).

¹⁷ *Shawe*, 157 A.3d at 169.

an opportunity to address the issue. Rather than addressing the Rule 8 bar to his claim, Coello ignores it. Coello has not pled, not can he demonstrate, that the Superior Court committed plain error requiring review of his claim in the interests of justice. Consequently, this Court should decline review of Coello's claim because he failed to present it to the Superior Court in the first instance.

CONCLUSION

The judgment of the Superior Court should be affirmed.

/s/ John Williams

John Williams (#365)

JohnR.Williams@delaware.gov

Deputy Attorney General

Delaware Department of Justice

102 West Water Street

Dover, Delaware 19904-6750

(302) 739-4211, ext. 3285

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2. This answer brief complies with the type-volume limitation of Rule 14(d)(i) because it contains 3,557 words, which were counted by Microsoft Word 2016.

/s/ John Williams
John Williams (Bar No. 365)
Deputy Attorney General
Delaware Department of Justice

DATE: June 11, 2024