

STATE OF MICHIGAN  
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

vs.

MARY ANN MCBRIDE,

Defendant-Appellant.

Supreme Court No. 133142  
Court of Appeals No. 271579  
Macomb Circuit Court No. 05-4049-FC

**PLAINTIFF-APPELLANT'S SUPPLEMENTAL BRIEF  
ON APPLICATION FOR LEAVE TO APPEAL**

**ORAL ARGUMENT REQUESTED**

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## INTRODUCTION

This Court granted oral argument on the prosecution's application for leave to appeal regarding the admissibility of Defendant Mary Ann McBride's ("McBride") confession to Roseville police officers. The Court directed the parties to file supplemental briefs on the issue of "whether, under all of the circumstances, the defendant made a knowing, intelligent, and voluntary waiver of her Fifth Amendment rights." (6/1/07 Order). Plaintiff/Appellant, the People of the State of Michigan ("Plaintiff/Appellant"), contend that Defendant McBride, although a deaf-mute, made a knowing, intelligent, and voluntary waiver of her rights prior to confessing to the murder of her boyfriend.

## STATEMENT OF FACTS

Plaintiff/Appellant incorporates the Statement of Facts as set forth in Plaintiff/Appellant's application for leave to appeal.

Additionally, Plaintiff/Appellant points to the following references from the *Walker* hearing in support of its position:

- The police officers did *not* interview McBride until after an interpreter was present. (2/10/06 Tr. p. 16, 17).
- Stacey Yourdan was the interpreter present for the interview with McBride. (2/10/06 Tr. p. 17).
- The video camera was pointing at McBride and Ms. Yourdan's back was to the camera, making it impossible to see how Ms. Yourdan communicated with McBride. (2/10/06 Tr. p. 19-20).
- McBride signed the advice-of-rights form that provided (1) she had the right to remain silent, (2) any statement or anything she said could be used against her, (3) she had the right to have an attorney present before and during questioning, (4) an attorney would be appointed for her if she could not afford one, and (5) she could decide to exercise her rights at any time. (2/10/06 Tr. pp. 22, 40).

- McBride appeared to read the advice-of-rights form before she signed it. (2/10/06 Tr. p. 26).
- Even when McBride stated “do I need an attorney here” (2/10/06 Tr. pp. 28, 41), her statement indicated an understanding of the *Miranda* rights. Detective Sarrach then again repeated that “she had the right to have one.” (2/10/06 Tr. pp. 28, 41-42). McBride made no further requests for an attorney. (2/10/06 Tr. pp. 28-29).
- McBride answered the police officers’ questions audibly in some cases and, at other times, by nodding. (2/10/06 Tr. pp. 35, 36-37).
- McBride’s responses, whether to nod or verbally respond, were appropriate responses to the questions posed to her and she did not appear confused. (2/10/06 Tr. 59).
- The trial court admitted the video tape into evidence with the concurrence of both counsel. (2/10/06 Tr. p. 45).

## ARGUMENT

### I. THE FIFTH AMENDMENT PROTECTIONS

In the well-known case of *Miranda v Arizona*, 384 U.S. 436 (1966), the United States Supreme Court stated that police officers must apprise suspects of their rights to protect the defendant’s Fifth Amendment privilege against self-incrimination. *Id.* at 467. The *Miranda* Court set forth procedures that police officers should follow when apprising suspects of their rights, namely (1) that the suspect need not talk to the police, (2) that the suspect may have a lawyer present, (3) that the suspect may stop talking to police at any time, and (4) that any statements may be used against the suspect in court. *Id.*

A defendant may waive these rights so long as any waiver is knowing, voluntary, and intelligent. *Id.* at 444. This “waiver” test has two parts:

First, the relinquishment of the right must have been voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception. Second, the waiver must have been made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it. Only if the totality of the circumstances surrounding the interrogation reveals both an uncoerced

choice and the requisite level of comprehension may a court properly conclude that the *Miranda* rights have been waived. *Colorado v Spring*, 479 U.S. 564, 573 (1987).

The trier of fact is to consider whether the totality of circumstances surrounding the interrogation demonstrates that the suspect had the “requisite level of comprehension” of the consequences of the decision to waive his [her] rights.” *Spring*, 479 US at 573. Importantly, the defendant need not know and understand every possible consequence of a waiver. *Id.* at 574.

Further, *Miranda* is not some magical incantation that must be strictly followed; rather, the defendant must have a basic understanding of his/her general rights even if the police officer does not recite them verbatim. In fact, the “only inquiry with regard to a ‘knowing and intelligent’ waiver of *Miranda* rights, is, as stated, whether the defendant understood ‘that he did not have to speak, that he had the right to the presence of counsel, and that the state could use what he said in a later trial against him.’” *People v. Daoud*, 462 Mich 621, 643; 614 NW2d 152, 162 (2000) (citations omitted).

## **II. THE MICHIGAN STATUTE**

Michigan enacted the Deaf Persons’ Interpreters Act, MCL § 393.501 *et seq.*, to ensure that deaf persons are afforded Fifth Amendment rights. The statute requires police officers to ensure that a properly certified deaf language instructor (sign language) be provided for any custodial interrogation. MCL § 393.505(1).

McBride does not contest the police failed to abide by the statute. Instead, McBride concedes that a certified American Sign Language (“ASL”) interpreter/translator was present at the interview. McBride does not challenge the certification or qualifications of the interpreter. Consequently, the statute is not at issue on this appeal.

### III. MCBRIDE KNOWINGLY, INTELLIGENTLY, AND VOLUNTARILY WAIVED HER FIFTH AMENDMENT RIGHTS PRIOR TO HER MURDER CONFESSION

McBride does not contend that she is incompetent or of lower intelligence. Nor does she contend that the waiver was involuntary in that the police officers somehow coerced or deceived her. Instead, McBride argues that her waiver was not knowing or intelligent, *i.e.*, that she did not fully understand her rights or the consequences of waiving those rights. Her argument cannot withstand scrutiny.

First, McBride contends that the officers assumed she could read and write because she “shrugged” rather than nod her head or express an affirmative response through sign language when the police officers asked her if she could read and write. At no time did McBride inform the police officers that she could not read standard English, that she did not know how to write or sign her name (when in fact she did so), or that she required an interpreter to translate the form to her. McBride obviously can read and write English. When presented with the waiver or rights form, which contained the explicit, written *Miranda* rights, McBride paused to read the document and then signed her name in English. All evidence shows that McBride fully understands how to read and write English. Indeed, she has presented absolutely no evidence to the contrary. Michigan courts have expressed a preference for written “advice-of-rights forms” with respect to hearing-impaired defendants. *See People v Brannon*, 194 Mich App 121, 131; 486 NW2d 83, 88 (1992); *Patrice v Murphy*, 43 F Supp 2d 1156 (WD Wash, 1999) (officers adequately communicated *Miranda* warnings to deaf defendant by written form that she was capable of understanding). At a minimum, the trial court, on remand, could make this simple determination of McBride’s ability to read and write plain English.

Second, Detective Sarrach of the Roseville Police Department read the *Miranda* rights to McBride and a certified American Sign Language (“ASL”) translator, Stacey Yourdan, in turn

translated those rights to her. McBride has not challenged the licensure or skill of the translator and the police officers were entitled to rely on a certified ASL translator to express the *Miranda* warnings to McBride. Yourdan also has her back to the video camera recording the interview and thus McBride's expert cannot in good faith opine on how effective the translation was at the time of the interview. McBride undoubtedly understood Yourdan throughout the interview, as indicated by her responses to the questions that the police officers posed to her.

Third, McBride argues that Detective Sarrach incorrectly read the *Miranda* rights to her by failing to apprise McBride that she had the right to counsel during questioning. This issue is moot in light of the fact that McBride signed the advice-of-rights form that specifically advised her of the right to have an attorney present during questioning. Further, the United States Supreme Court repeatedly has emphasized that police officers need not recite the *Miranda* language verbatim, but only must convey the enumerated rights. *California v Prysock*, 453 US 355, 359 (1981) (“no talismanic incantation is required to satisfy [*Miranda's*] strictures.”); *Dickerson v United States*, 530 US 428, 440 n 6 (2000). In this case, Detective Sarrach informed McBride that she had the right to remain silent or not talk to the police, that she could have an attorney present, and that if she could not afford an attorney that the court would appoint one for her. Although Detective Sarrach perhaps did not read the *Miranda* warnings verbatim as commonly seen on television, he nonetheless complied with the mandate of *Miranda*.

Fourth, McBride makes much of Detective Sarrach's refusal to stop questioning her in light of her query of “do I need an attorney here?” or something to that effect. Police officers only have to respond that the defendant has the right to have an attorney present, which Detective Sarrach did. McBride did not make an unequivocal request for counsel, *e.g.*, *I want my attorney*, and the police officers do not have to stop questioning in response to a question or

unequivocal response. State and federal cases repeatedly have held that mere references or indirect requests for an attorney are insufficient to stop questioning or invoke Fifth Amendment rights. *See, e.g., Davis v United States*, 512 US 452, 457 (1994); *People v Tierney*, 266 Mich App 687, 710-11; 703 NW2d 204 (2005). A defendant must make a specific request to invoke Fifth Amendment rights and McBride did not do so here. Detective Sarrach responded to her remark within the confines of the law.

Fifth, McBride responded to the police officer's questions throughout the interview as if she had a complete and total understanding of the questions. In a similar case, the United States Court of Appeals for the Sixth Circuit denied a defendant's habeas relief from an Ohio court that the defendant had fully understood his *Miranda* rights absent an ASL interpreter:

Contrary to [defendant's] argument, the Ohio Court of Appeals properly applied the *Spring/Moran* standard and permissibly determined that he waived his *Miranda* rights. This determination is made in light of the "totality of the circumstances," including the evidence presented at the competency hearings that [defendant] had the ability to understand abstract concepts such as those in the *Miranda* warnings. Although [defendant] has identified evidence that would support his claims [that he did not give a knowing and intelligent waiver], there was also substantial evidence that he understood the warnings. For example, [the police officer] testified that he and [defendant] had communicated for several hours the day he confessed and that during these communications, [defendant] provided rational responses to questions and volunteered information. He did not simply answer "yes" to each yes/no question he was asked while being advised of his *Miranda* rights, but rather indicated "no" to some questions, indicating that he was not merely agreeing with everything that the officer asked. As the Ohio Court of Appeals noted, [defendant] provided appropriate responses to open-ended questions and corrected his answers when he realized he had misunderstood the question. Facts such as these indicate that [the police officer and defendant] were communicating effectively, though imperfectly, during the interrogation and issuance of *Miranda* warnings. *Stanley v. Lazaroff*, 82 Fed Appx 407 (CA6, 2003).

Here, McBride communicated with officers for more than 45 minutes and she provided rational responses, not just "yes" and "no" questions. McBride answered "no" to other questions, which demonstrates that she was not simply "agreeing" with the translator or the police officers but in fact understood her ability to negate elements of the conversation. All of these

circumstances suggest that she gave a knowing, voluntary, and intelligent waiver of her rights prior to her confession. *See also Rawls v. Florida*, 596 So2d 1255 (Fla Ct App, 1992) (using totality of circumstances test, deaf defendant understood his rights and signed a waiver or rights form; statements were admissible); *People v. Nilsson*, 595 NE2d 1304 (Ill Ct App, 1992) (finding deaf defendant voluntarily and knowingly waived *Miranda* rights translated by a certified sign language translator despite defense's expert testimony that deaf defendant could not understand such rights); *Hawk v Florida*, 718 So2d 159 (Fla Ct App, 1998) (deaf defendant understood *Miranda* rights given by ASL interpreter and confession was admissible); *Tennessee v Perry*, 13 SW3d 724 (Tenn App Ct, 1999) (deaf defendant's statements admissible even absent a certified translator when defendant could read, write, and read lips); *Mesa v United States*, 875 A2d 79 (CA DC, 2005) (deaf defendant fully understood rights, understood English, and signed waiver of rights form).

#### **IV. THE MICHIGAN COURT OF APPEALS INCORRECTLY INTERPRETED FEDERAL AND STATE LAW TO REACH AN INCORRECT RESULT**

The Michigan Court of Appeals correctly analyzed the general legal precedents involving *Miranda* warnings, noting that a defendant need not specifically waive his/her right to counsel and "that there can be a waiver [of *Miranda* rights] without the use of specific or magic words." *People v McBride*, 273 Mich App 238, 251-52; 729 NW2d 551(2006), citing *People v Matthews*, 22 Mich App 619, 624-27; 178 NW2d 94 (1970). The Court of Appeals correctly found that McBride's act of signing the form "was sufficient evidence" of her waiver of *Miranda* rights. *McBride*, 273 Mich App at 253. The appellate court thus found that McBride made a "voluntary" waiver of her Fifth Amendment rights.

Instead, the crux of this case concerns whether McBride made a "knowing and intelligent" waiver of her Fifth Amendment rights. In determining that McBride did not make a

knowing and intelligent waiver, the Court of Appeals relied on *Brannon, supra*, which similarly involved a deaf defendant who “appeared” to understand the officers and made appropriate responses. *McBride*, 273 Mich App at 254-55. The police used an advice-of-rights form, which the defendant signed, and *the police did not even use an interpreter*. Given the totality of the circumstances, the *Brannon* Court found an effective, knowing, and intelligent waiver-of-rights.

The *Brannon* analysis applies to this case, although with a different result than that reached by the Court of Appeals. Here, the officers made every effort to communicate with McBride, used an ASL interpreter to translate the *Miranda* rights to McBride, used an advice-of-rights form that McBride read and signed, and McBride made appropriate responses to the police officers’ questions. The totality of the circumstances indicates that McBride fully understood her rights and the police officers took more specific and detailed steps than the officers did with the defendant in *Brannon*. The Court of Appeals seemingly ignored the binding precedent of *Brannon* to reach the result in this case.

Further, the Court of Appeals summarily dismissed the case of *People v Troung*, 218 Mich App 325; 553 NW2d 692 (1996), which involved a Vietnamese defendant’s alleged waiver of his constitutional rights. In *Troung*, the defendant could not speak English and an interpreter translated the *Miranda* rights “word-for-word.” *Id.* at 334. The non-English speaking defendant then signed a waiver of rights form and responded in a logical manner to the police officers’ questions. *Id.* at 334-335. The Court of Appeals found that the defendant had made a knowing and intelligent waiver of his constitutional rights. *Id.* at 335.

The *Troung* case is remarkably similar to this one and, with the test applied in *Brannon*, should have provided the Court of Appeals with the requisite precedent and guidance to find a knowing and intelligent waiver here. Deaf individuals are afforded the same courtesy for an

interpreter as non-native speakers, but there should not be a special or more specific test for such individuals. Nonetheless, the Court of Appeals imposed a more specific test in this case without any citation to law or precedent. Instead, the Court of Appeals simply dismissed *Troung* as inapplicable and incorrectly extended *Brannon* to require police officers to ensure that deaf suspects have a better and complete understanding of *Miranda* warnings beyond that of non-native speakers. *McBride*, 273 Mich App at 255-57. The Court of Appeals inaccurately interpreted its own binding precedent and reached an incorrect result in this case. *See People v Perez*, 2003 WL 22240690 (Mich Ct App, 9/30/03) (analyzing *Brannon* and *Troung* as similar and binding precedent to be interpreted together).

#### REQUESTED RELIEF

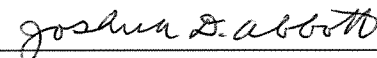
Plaintiff/Appellant respectfully requests that this Court **REVERSE** the decisions of the lower courts and **ORDER** that Defendant/Appellee McBride's statements be admitted into evidence at the jury trial.

Respectfully Submitted,

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Macomb County, Michigan

Robert Berlin P27824  
Chief Appellate Attorney

By:



Joshua D. Abbott P53528  
Assistant Prosecuting Attorney

Dated: July 30, 2007

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No. 133142

-vs-

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Macomb Circuit  
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**PROOF OF SERVICE**

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July 30, 2007

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**People v Mary Ann McBride**  
**Supreme Court No. 133142**  
**Court of Appeals No. 271579**  
**Macomb Circuit No. 05-4049-FC**

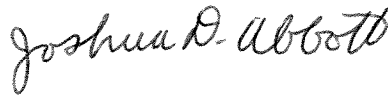
Dear Mr. Davis:

Enclosed please find the original and seven copies of **Plaintiff-Appellant's Supplemental Brief on Application for Leave to Appeal**. A Proof of Service is also enclosed.

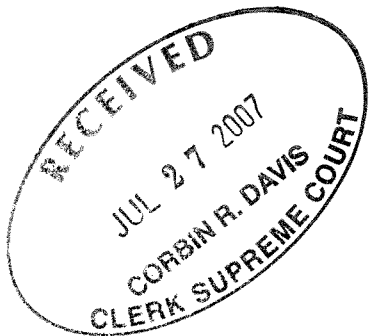
Sincerely,

Eric J. Smith P46186  
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By:



Joshua D. Abbott P53528  
Assistant Prosecuting Attorney



Enc.

cc: Robert C. Buschmohle  
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