RECEIVED by MSC 10/16/2025 3:41:25 PM

STATE OF MICHIGAN
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN
Plaintiff-Appellee,

v.

DAREN DONELL FENDERSON **No. 167391**
Defendant-Appellant.

L.C. 23-000412-FC
COA No. 367926

APPELLEE'S SUPPLEMENTAL BRIEF ON DEFENDANT'S APPLICATION FOR LEAVE TO APPEAL

*****Oral Argument Requested*****

KYM L. WORTHY
Prosecuting Attorney
County of Wayne

JON P. WOJTALA
Chief, Research, Training, and Appeals

TIMOTHY A. BAUGHMAN
Special Assistant Prosecuting Attorney
5301 Russell St, Suite 200 (4th Floor)
Detroit, Michigan 48211
(313) 202-7113

RECEIVED by MSC 10/16/2025 3:41:25 PM

Table of Contents

Page

Index of Authorities . . . . . -ii-

Statement of the Question . . . . . -1-

Statement of Facts . . . . . -1-

Argument

I. Both a waiver of *Miranda* warnings and a resulting statement must be voluntary. Here, after asserting the *Miranda* counsel right, defendant re-initiated a discussion with an officer, who told him before he confessed that "I don't want you to feel compelled to talk to me because you don't want to go with them [to the Detention Center]. That's the thing. Now if you reasonably want to talk to me without an attorney present, I'll talk to you, but you gotta understand it's gotta be something you want to do" and "I don't want you to feel like you're forced to, okay, do anything. Is that something you want to do?" There was no coercive police conduct. . . . . -3-

Introduction . . . . . -3-

Discussion . . . . . -4-

A. The Court of Appeals' opinion . . . . . -4-
1. The Court of Appeals' statement of the relevant facts . . . . . -4-
2. The Court of Appeals' resolution of the legal issue involved. . . . . -5-

B. The Court of Appeals' opinion correctly resolves the issue . . . . . -7-
1. The questioning shows cautious and noncoercive police conduct . . . . . -7-
2. Defendant reinitiated discussion after asserting a *Miranda* warning . . -11-
3. The waiver was knowing, intelligent, and voluntary . . . . . -13-

Relief . . . . . -15-

RECEIVED by MSC 10/16/2025 3:41:25 PM

Index of Authorities

Case **Page**

FEDERAL CASES

Colorado v. Connelly,
479 U.S. 157, 107 S. Ct. 515, 93 L. Ed. 2d 473 (1986) 13

Davis v. United States,
512 U.S. 452, 114 S. Ct. 2350, 129 L. Ed. 2d 362 (1994) 8

Edwards v Arizona,
451 U.S. 477, 101 S.Ct. 1880, 68 L.Ed.2d 378 (1981)) 8, 11, 12, 13

Maryland v. Shatzer,
559 U.S. 98, 130 S. Ct. 1213, 175 L. Ed. 2d 1045 (2010) 8

Minnick v. Mississippi,
498 U.S. 146, 111 S. Ct. 486, 112 L. Ed. 2d 489 (1990) 8

Oregon v. Bradshaw,
462 U.S. 1039, 103 S. Ct. 2830, 77 L. Ed. 2d 405 (1983) 11, 12

United States v. Cristobal,
293 F.3d 134 (CA 4, 2002) 13

Vega v. Tekoh,
597 U.S. 134, 142 S. Ct. 2095, 213 L. Ed. 2d 479 (2022) 8

STATE CASES

Paramount Pictures Corp. v. Miskinis,
418 Mich. 708 (1984) 15

People v Adams,
245 Mich. App. 226 6

People v. Fenderson,
2024 WL. 2868673 (No. 367926, Mich. Ct. App. June 6,
2024) 5, 6, 7

People v. Fenderson,
15 N.W.3d 595 (Mich. 2025) 4

People v Kowalski,
230 Mich. App. 464 6

People v Manning,
243 Mich. App. 615 (2000). 14

People v. Tanner,
496 Mich. 199 (2014) 15

STATE STATUTES

1963 Mich. Const. Art. I, § 17 15

OTHER AUTHORITY

Joseph Grano, "Voluntariness, Free Will, and the Law of Confessions,"
65 Va. L. Rev. 859, 906 (1979) 14

LaFave, Criminal Procedure (4th ed.). 8

Michigan Criminal Procedure Practice Deskbook 13

RECEIVED by MSC 10/16/2025 3:41:25 PM

RECEIVED by MSC 10/16/2025 3:41:25 PM

Statement of the Question

I.

Both a waiver of *Miranda* warnings and a resulting statement must be voluntary. Here, after asserting the *Miranda* counsel right, defendant re-initiated a discussion with an officer, who told him before he confessed that "I don't want you to feel compelled to talk to me because you don't want to go with them [to the Detention Center]. That's the thing. Now if you reasonably want to talk to me without an attorney present, I'll talk to you, but you gotta understand it's gotta be something you want to do" and "I don't want you to feel like you're forced to, okay, do anything. Is that something you want to do?" Was there coercive police conduct?

Defendant answers: YES

The People answer: NO

Statement of Facts

Defendant was charged with first-degree murder pursuant to MCL 750.316(1)(a), felony firearm pursuant to MCL 750.227b, and escaping from lawful custody pursuant to MCL 750.197a. On April 19, 2023, defendant filed a motion seeking to suppress all oral and written statements made by defendant at the time of and after defendant's arrest, specifically focusing on defendant's statement made after re-initiation of questioning on August 3, 2022, on the ground that defendant had previously asserted his Fifth Amendment right to counsel. On June 14, 2023, the People filed an answer to defendant's motion, arguing that questioning of defendant ceased after defendant asserted his Fifth Amendment right to counsel, and that questioning only resumed after defendant re-initiated contact, was advised again of his Fifth Amendment rights, and again waived those rights. On September 6, 2023, after a hearing on the motion, Judge Wanda A. Evans granted defendant's motion to suppress and issued a stay of proceedings pending appeal. The People sought leave to appeal this order, which was granted in an order dated November 15, 2023. The Court of Appeals

reversed the trial court's order of suppression in a split, unpublished per curiam opinion dated June 6, 2024. This Court has ordered supplemental briefing and argument on the application. Further facts will be discussed as necessary in the argument. References to the transcript will be noted using the date of the hearing, followed by the page number.[1]

[1] References to the interview video will be noted using the date of the interview, followed by the time stamp.

RECEIVED by MSC 10/16/2025 3:41:25 PM

RECEIVED by MSC 10/16/2025 3:41:25 PM

Argument

I.

Both a waiver of *Miranda* warnings and a resulting statement must be voluntary. Here, after asserting the *Miranda* counsel right, defendant re-initiated a discussion with an officer, who told him before he confessed that "I don't want you to feel compelled to talk to me because you don't want to go with them [to the Detention Center]. That's the thing. Now if you reasonably want to talk to me without an attorney present, I'll talk to you, but you gotta understand it's gotta be something you want to do" and "I don't want you to feel like you're forced to, okay, do anything. Is that something you want to do?" There was no coercive police conduct.

Introduction

The Court has directed that the parties brief whether the Court of Appeals erred in its unpublished opinion "by reversing the trial court's decision to grant the defendant's motion to suppress statements. In particular, the parties shall address whether the defendant's decision to waive his rights under *Miranda v Arizona*, 384 US 436 (1966), was made " 'voluntarily, knowingly, and intelligently,' " *People v Tanner*, 496 Mich 199, 209 (2014), quoting *Miranda*, 384 US at 444, and whether the interrogating officers' statements and conduct violated defendant's right to be free from self-incrimination under the Fifth Amendment of the United States Constitution or Article 1, § 17

RECEIVED by MSC 10/16/2025 3:41:25 PM

of the Michigan Constitution."[2] The People answer that the Court of Appeals correctly resolved the issue in its analysis of the facts and law.

Discussion

A. The Court of Appeals opinion correctly resolves the issue

1. The Court of Appeals statement of the relevant facts

- The police attempted to conduct a custodial interrogation after arresting defendant, but could not proceed because defendant appeared to be intoxicated. The next day, the officers read defendant his constitutional rights concerning the interrogation, and defendant signed a document that explained these rights. During this initial interrogation, defendant told the officers that his truck was carjacked on the night of the victim's death, and that the carjacker was driving defendant's vehicle when the victim was killed.

- The officers interrupted defendant, however, and told defendant that they had surveillance-video footage that showed defendant driving the vehicle. Defendant attempted to change his story, and he agreed to tell the officers "what they wanted to hear" once he had an attorney. Interpreting this as a request for an attorney, the officers left defendant and tried to find him one.

- After making several inquiries over a couple of hours, the officers were unsuccessful in finding defendant an attorney. They returned to the interrogation room, and one of the uniformed officers handcuffed defendant for transport to a detention center. Defendant expressed confusion on being removed from the room, stating, "hold on, wait ... wait, huh?" One of the officers explained to defendant that they could not find defendant an attorney,

---

[2] *People v. Fenderson*, 15 N.W.3d 595 (Mich. 2025).
The issue raised in the People's application and brief in the Court of Appeals was:

> The police may not question a defendant after an assertion of the *Miranda* right to counsel unless the defendant re-initiates contact. Here, after asserting his right to counsel, defendant later asked to talk again, saying, "I agree to talk without an attorney," and then gave a second statement after again being informed of his *Miranda* rights. Was defendant's second statement voluntary under the Fifth Amendment?

RECEIVED by MSC 10/16/2025 3:41:25 PM

and he did not have funds to hire his own attorney, so they were going to return him to the detention center.

- Defendant questioned why he was leaving, and the officer explained that they could not talk to him because he asked for an attorney and that they would use the statement that defendant had given them earlier. The officer further explained that defendant would be returned to the detention center, and the police and prosecutor would seek an arrest warrant. The officer reiterated that he could not talk to defendant about the case because defendant had asked for an attorney. Defendant then responded, "Uhm, I just want to get this over," and he repeated this sentiment several more times.

- In response, the officer explained to defendant that he did not want defendant to feel "compelled" to speak to them. *Defendant asserted that he wanted to speak with the officers*. Interpreting this as a request to reinitiate their conversation, the investigating officer left the room, and an officer separate from the investigation *instructed defendant again about his constitutional rights*. Defendant *signed another form indicating that he understood his rights*, and he then confessed to hitting the victim with his truck. Defendant was in the interrogation room for over five hours, but only spoke to the officers for two of those hours. When he was not speaking with the officers, defendant received food, drink, and bathroom breaks, and he was free to stand and walk around the room.[3]

2. The Court of Appeals resolution of the legal issue involved

- In this case, defendant was 24 years old at the time of the interrogation, and he had completed three years of high-school education. Defendant was in the interrogation room for over five hours, and he spoke to the officers for approximately two of those hours. When defendant was not speaking to the officers, he received snacks and bathroom breaks.

- Defendant was fully informed of his constitutional rights on three separate occasions, and he affirmed that he understood his rights each time. The record does not indicate that there was any unnecessary delay in this process, and, further, there were no signs that defendant was intoxicated, drugged, or otherwise incapacitated during later attempts to interrogate him.

- Additionally, defendant made multiple unequivocal requests to speak to the officers without an attorney present, and he confirmed his reinitiation of the interrogation after being advised of his rights again.

---

[3] *People v. Fenderson*, 2024 WL 2868673, at 1 (No. 367926, Mich. Ct. App. June 6, 2024) (emphasis supplied).

RECEIVED by MSC 10/16/2025 3:41:25 PM

- With respect to this reinitiation, the record shows that defendant knew that he was under no obligation to speak with the officers when they returned. Importantly, when the investigating officers returned to take defendant back to the detention center, *they did not initiate any questioning of defendant*. *Had defendant remained silent, the officers would have taken him back to the center, as they explained*. At no point before defendant stated that he wanted to speak with them again without an attorney did an officer ask him questions about the offense.

- When defendant stated that he wanted to speak to them without an attorney, the officers confirmed that he wanted to speak, and then another officer, unrelated to the investigation, came in to remind defendant of his rights. *Defendant repeatedly stated throughout these encounters that he wanted to speak to the officers*. Explaining to defendant that they could not speak with him because he had requested an attorney, and then later confirming with defendant that he wanted to speak to them, in response to defendant's assertion that he wanted to speak, does not show that the officers reinitiated the conversation. See id. at 479, 482. See also People v Adams, 245 Mich App 226, 236-239; 627 Mich App 623 (2001) (approving of an inquiry by police to clarify whether defendant is reinitiating a discussion with them without the presence of a lawyer).

- The officers were ending the contact—not reinitiating it—by returning defendant to the detention center. Thus, the record confirms that defendant was able to make a voluntary, informed decision to reinitiate the conversation. See *People v Kowalski*, 230 Mich App 464, 483-484; 584 NW2d 613 (1998) (holding that the "defendant, by unequivocally indicating that he no longer wanted an attorney and he wished to give a statement, initiated the conversation that ultimately led to his confession").

- As to the motives and tactics of the officers, contrary to the what the dissent reads into the record, there is no reliable evidence to suggest that the investigators intentionally delayed or refused to find defendant an attorney. Rather, the record shows that they tried to find defendant an attorney who might have been available to represent defendant during the interview; that their efforts were not successful should not be grounds for blame or suppression of defendant's statement.

  Likewise, defendant was not physically or psychologically abused or threatened in any way, at any point—in fact, as noted earlier, defendant had ready access to food, drink, bathroom facilities, and room to walk around during the relatively short period of time when the officers were trying to find him an attorney. During this waiting period, the video shows that defendant certainly appeared to be bored, and he even lamented on occasion about being

RECEIVED by MSC 10/16/2025 3:41:25 PM

in this predicament, though this hardly can be considered as evidence of psychological abuse.

- There is, in short, no reliable evidence from which to conclude that the officers engaged in some kind of ruse about finding an attorney in the hope that having defendant placed alone in a room for a couple of hours would somehow psychologically break him into giving a confession.[4]

B. The Court of Appeals opinion correctly resolves the issue

1. The questioning shows cautious and noncoercive police conduct

The trial court found defendant's second statement involuntary because: (1) defendant had previously asserted his Fifth Amendment right to counsel; (2) defendant waited in the interrogation room while the police attempted to find counsel; and (3) the police told defendant that because they could not find counsel, they could not speak further to defendant and would be moving forward on charges with the statement defendant had already given, placing extra pressure on defendant.[5] The trial court found that the police coming back and informing defendant that they could not find an attorney at that time, so they would have to "go with the statements we have," was a "scare tactic" to get defendant to talk again.[6] There is no evidence of this, and that simple statement cannot be viewed as overbearing the will of a reasonable person. The obligation of the police when a person advised of *Miranda* warnings unequivocally says that he or she wants an attorney is to cease questioning; there is no obligation to actually provide an attorney, and one is not waiting in the wings

[4] Id., 2024 WL 2868673, at 3–4.

[5] 9/1, 122-123; 9/6, 6-7.

[6] 9-6, 6-7.

RECEIVED by MSC 10/16/2025 3:41:25 PM

to advise the person in custody.[7] Actually providing the person in custody with an attorney in this circumstance is rare.[8]

There thus is no constitutional right to provision of counsel during questioning—the Fifth Amendment says nothing about counsel—the warning being a prophylactic one to protect that which the Constitutional actually provides, a right against compulsion by the police; that is, to ensure the voluntariness of statements.[9] The waiver of the prophylactic warning[10] must be done voluntarily, knowingly, and intelligently.[11] When a defendant unequivocally invokes his right to counsel, questioning must cease "*unless the accused himself initiates* further *communication, exchanges, or conversations* with the police."[12] The defendant did so here.

Sergeant Reginald Beasley first sought to interrogate defendant on August 2, 2022.[13] When Beasley presented defendant with the Rights of Advice form explaining defendant's constitutional rights under *Miranda,* he had defendant read the first right out loud.[14] Defendant then read the rest

---

[7] See *Davis v. United States*, 512 U.S. 452, 454, 114 S. Ct. 2350, 2352, 129 L. Ed. 2d 362 (1994) ("In Edwards v. Arizona, 451 U.S. 477, 101 S.Ct. 1880, 68 L.Ed.2d 378 (1981), we held that law enforcement officers must immediately cease questioning a suspect who has clearly asserted his right to have counsel present during custodial interrogation").

[8] The situation is not akin to lineups, when generally a lawyer is on standby to function as a "camera" for the defendant. There is no obligation to actually provide a defendant who requests a lawyer after *Miranda* warnings with a lawyer; rather, the duty is to cease questioning unless, as happened here, defendant reinitiates the conversation. *Minnick v. Mississippi*, 498 U.S. 146, 149, 111 S. Ct. 486, 488, 112 L. Ed. 2d 489 (1990) is the exception that proves the rule. All other cases concern whether the request for counsel was unequivocal. See LaFave, 2 Criminal Procedure (4th ed.) § 6.9(g).

[9] See *Vega v. Tekoh*, 597 U.S. 134, 150, 142 S. Ct. 2095, 2106, 213 L. Ed. 2d 479 (2022) ("a violation of Miranda does not necessarily constitute a violation of the Constitution").

[10] The *Miranda* warnings are not contained in the Fifth Amendment, and are not themselves rights protected by the Constitution. *Vega v. Tekoh*, supra.

[11] *Maryland v. Shatzer*, 559 U.S. 98, 104, 130 S. Ct. 1213, 1219, 175 L. Ed. 2d 1045 (2010).

[12] *Edwards v Arizona*, 451 US 477, 484-485 (1981) (emphasis added).

[13] 1/5, 18.

[14] 1-5, 18-19.

RECEIVED by MSC 10/16/2025 3:41:25 PM

of the document to himself before initialing each right and signing his name.[15] During this interaction, however, Beasley realized defendant was lethargic and possibly under the influence of some drug or alcohol.[16] Beasley then decided not to ask defendant any questions and had defendant transferred to the Detroit Detention Center.[17] The next day, on August 3, 2022, Beasley had defendant brought to Detroit Police Department headquarters to conduct an interview.[18] With Detective Douglas Williams joining the interview, Beasley *again* advised defendant of his constitutional rights by reading the rights to defendant, who again initialed and signed the document.[19] Around an hour and half into the interview, defendant asserted his Fifth Amendment right to counsel.[20] Immediately after defendant asserted his *Miranda* right to counsel, Beasley and Williams did that which is required—ceased questioning defendant—and left the interview room and actually attempted, unsuccessfully, to find an attorney for defendant.[21] Defendant remained in the interview room for a little over 2.5 hours while police searched for an attorney, and, during this time, asked for and received a Coke, and went to the bathroom twice.[22]

After the police could not locate an attorney, Beasley walked into the interview room with a uniformed officer.[23] Beasley informed defendant that he could not find an attorney, and after defendant asked, "What's going on?" Beasley replied, "You said you wanted an attorney, I can't talk

---

[15] 1-5, 19.

[16] 1-5, 18,20-21.

[17] 1-5, 21.

[18] 1-5, 23.

[19] 1-5, 23-28.

[20] 1-5, 27-29.

[21] 1-5, 30.

[22] 1/5, 40, 47; 8/3, 02:05:42 – 04:49:58; see 8/3, 02:11:57 – 02:13:30, 02:48:53, 04:24:46.

[23] 8/3, 04:49:58.

RECEIVED by MSC 10/16/2025 3:41:25 PM

to you without an attorney, so the story you gave is the story we have to go with."[24] As the uniformed officer was patting defendant down and Beasley was cleaning up the interview room, defendant said, "So confusing."[25] When Beasley asked defendant what he was confused about, defendant responded, "I don't know what's going on from this point you didn't tell me nothing."[26] Beasley then replied, "What's going to happen now, we're going to take you back to the [Detroit Detention Center], and we're going to submit a warrant, and the prosecutor is going to review it, all right?"[27] Defendant then responded, "I'm not sure what all that mean," and Beasley explained "You requested an attorney, I can't talk to you any more about the case. You wanted to talk, you just say, you wanted to talk to an attorney. If you say you want an attorney, I can't talk to you by law."[28]

After Beasley's second explanation that he could not talk to defendant because defendant requested an attorney, defendant stated, "I just want to get this over with. That's it. I just wanna get this over with."[29] Beasley then informed defendant. "I can go over your rights again with you, and if you agree to talk without an attorney—" and defendant interrupted, "I agree to talk without an attorney. Y'all heard that? I agree. I just want to get this over with."[30] Beasley and defendant then have the following exchange:

> Beasley: *I don't want you to feel compelled to talk to me because you don't want to go with them. That's the thing*. Now if you reasonably want to talk to me without an attorney present, I'll talk to you, *but you gotta understand it's gotta be something you want to do.*
>
> Defendant: Yeah

---

[24] 8/3, 04:49:58 – 04:50:56.

[25] 8/3, 04:51:08.

[26] 8/3, 04:51:10 – 04:51:13.

[27] 8/3, 04:51:21.

[28] 8/3, 04:51:25 – 04:51:54.

[29] 8/3, 04:51:47 – 04:52:04.

[30] 8/3, 04:52:05 – 04:52:14.

RECEIVED by MSC 10/16/2025 3:41:25 PM

> Beasley: *I don't want you to feel like you're forced to, okay, do anything*. Is that something you want to do?
>
> Defendant: Yes.[31]

After defendant re-initiated contact, and was advised of his rights by Brown, he informed Brown he was now waiving his right to counsel and wanted to talk, and Beasley and Williams returned to interview him.[32] Defendant then admitted that he killed the decedent.[33]

2. Defendant reinitiated discussion after asserting a *Miranda* warning

In *Oregon v. Bradshaw*,[34] after *Miranda* warnings the defendant said "I do want an attorney before it goes very much further" and the officer "immediately terminated the conversation."[35] Sometime later Bradshaw was transferred from the police station to the county jail, and during the trip asked of an officer "Well, what is going to happen to me now?" Much like the present case, the officer answered "You do not have to talk to me. You have requested an attorney and I don't want you talking to me unless you so desire because anything you say—because—since you have requested an attorney, you know, it has to be at your own free will." Bradshaw said he understood, and the officer suggested that he "might help himself by taking a polygraph examination," and Bradshaw agreed to do so. The next day he was again read his *Miranda* warnings and signed a waiver, was given the polygraph, told it showed deception, and he then recanted his earlier story and confessed. The Oregon Court of Appeals held that the questioning after the initial assertion of the right to counsel violated the *Edwards* rule, and the Supreme Court reversed.

The Supreme Court explained that *Edwards* is a police anti-badgering rule, which the police had not violated:

---

[31] 8/3, 04:52:15 – 04:53:19.

[32] 1/5, 43, 45, 52.

[33] 8/3, 05:05:07 – 05:05:18:32.

[34] *Oregon v. Bradshaw*, 462 U.S. 1039, 1041–42, 103 S. Ct. 2830, 2833, 77 L. Ed. 2d 405 (1983).

[35] *Oregon v. Bradshaw*, 462 U.S. 1039, 1041–42, 103 S. Ct. 2830, 2833, 77 L. Ed. 2d 405 (1983).

RECEIVED by MSC 10/16/2025 3:41:25 PM

> We think the Oregon Court of Appeals misapprehended the test laid down in *Edwards*. We did not there hold that the "initiation" of a conversation by a defendant such as respondent would amount to a waiver of a previously invoked right to counsel; we held that after the right to counsel had been asserted by an accused, further interrogation of the accused should not take place "*unless the accused himself initiates further communication, exchanges, or conversations with the police*." . . . This was in effect a prophylactic rule, designed to protect an accused in police custody from being badgered by police officers.[36]

`The Court concluded that there was no violation of *Edwards*, as defendant's "question in this case as to *what was going to happen to him* evinced a willingness and a desire for a generalized discussion about the investigation." It "could reasonably have been interpreted by the officer as relating generally to the investigation," and was so understood by the officer, as "he immediately reminded the accused that 'you do not have to talk to me,' and only after the accused told him that he 'understood" did they have a generalized conversation."[37] The Court then held that "on these facts we believe that there was not a violation of the *Edwards* rule, as defendant had reinitiated a discussion." There remained, however, the inquiry as to whether the waiver was knowing, intelligent, and voluntary, knowing and intelligent, the inquiry "including the necessary fact that the accused, not the police, reopened the dialogue with the authorities."[38]

Here, as in *Bradshaw*, the defendant reinitiated the conversation, and did so more clearly than did Bradshaw. Bradshaw asked "well, what is going to happen to me now," and defendant here said "What's going on?" when told he was to be transferred to the detention center, and "so confusing," and when asked defendant what he was confused about responded, "I don't know what's going on from this point you didn't tell me nothing," and when the officer explained "What's going to happen now, we're going to take you back to the [Detroit Detention Center], and we're going to submit a warrant, and the prosecutor is going to review it, all right?"[39] Defendant responded, "I'm not sure

---

[36] Id, at 103 S. Ct. 2834.

[37] Id.

[38] Id., at 2385 (emphasis supplied).

[39] 8/3, 04:51:21.

RECEIVED by MSC 10/16/2025 3:41:25 PM

what all that mean," and the officer explained "You requested an attorney, I can't talk to you any more about the case. You wanted to talk, you just say, you wanted to talk to an attorney. If you say you want an attorney, I can't talk to you by law." Defendant then said "I just want to get this over with. That's it. I just wanna get this over with," and when again told"I can go over your rights again with you, and if you agree to talk without an attorney—" defendant interrupted, "I agree to talk without an attorney. Y'all heard that? I agree. I just want to get this over with." And defendant was again cautioned that the decision was his alone and he should not feel coerced or compelled in the colloquy quoted above. There was no *Edwards* violation here.

3. The waiver was knowing, intelligent, and voluntary

Coercive police conduct is the *sine qua non* of a Fifth Amendment violation, as the Supreme Court held in *Colorado v. Connelly*[40] that "coercive police activity is a necessary predicate to the finding that a confession is not 'voluntary' within the meaning of the Due Process Clause of the Fourteenth Amendment." The Court there held that a defendant's "perception of coercion flowing from the 'voice of God' . . . is a matter to which the United States Constitution does not speak."[41] The requirement of coercive police conduct applies as well as a prerequisite to the voluntariness of a *Miranda* waiver: "We engage in the same inquiry when analyzing the voluntariness of a Miranda waiver as when analyzing the voluntariness of statements under the Due Process Clause. See *Colorado v. Connelly* . . . .('There is obviously no reason to require more in the way of a voluntariness inquiry in the *Miranda* waiver context than in the Fourteenth Amendment confession context'). . . . The test for determining whether a statement is involuntary under the Due Process Clause "is whether the defendant's will has been 'overborne' or his 'capacity for self-determination critically impaired,' . . .because of coercive police conduct."[42]

---

[40] *Colorado v. Connelly*, 479 U.S. 157, 167, 107 S. Ct. 515, 522, 93 L. Ed. 2d 473, (1986). And see Gillespie Mich. Crim. L. & Proc. Prac. Deskbook § 3:52.

[41] Id, 107 S. Ct. at 523–524.

[42] *United States v. Cristobal*, 293 F.3d 134, 140 (CA 4, 2002).
There is no clear definition of when a will is "overborne," but Professor Grano supplies a useful test: whether one of "ordinary firmness," possessing the defendant's physical

RECEIVED by MSC 10/16/2025 3:41:25 PM

There was no coercive police conduct here; indeed, the officer was extremely solicitous of defendant's rights. The facts here are very similar to those in *People v Manning*,[43] where the waiver was found voluntary. There, the court said that:

> The record indicates that Manning, who was nineteen years old at the time of her arrest, received *Miranda* warnings before giving her inculpatory statement. Manning testified that she both read and understood her rights. She further testified that the police did not deprive her of food, water, or sleep. Detective Darian Williams testified that Manning did not appear to be under the influence of any drug or other intoxicant and that she did not appear to need medical attention. Finally, we note that Manning, rather than the police, initiated the discussion that resulted in her giving the inculpatory statement.[44]

Here, defendant also initiated the discussion that resulted in him giving the inculpatory statement. Defendant also received (multiple) *Miranda* warnings before giving his statement. The police similarly did not deprive defendant of food, water, or sleep. Not only did defendant here not appear to be under the influence of any drug or intoxicant, but police had previously declined to interview defendant when he did appear to be under the influence.

Given the police's immediate observation of defendant's assertion of his *Miranda* right to counsel, defendant's re-initiation of contact and indication he wished to speak without counsel, and the fact that police again advised defendant of his *Miranda* before again interviewing him, both defendant's waiver and the resulting second statement were voluntary under the Fifth Amendment. Indeed, officer Beasley said to defendant "*I don't want you to feel compelled to talk to me because you don't want to go with them. That's the thing*. Now if you reasonably want to talk to me without an attorney present, I'll talk to you, *but you gotta understand it's gotta be something you want to do*"

> characteristics and "relevant mental abnormalities"and "strongly preferring not to confess," regardless of his actual guilt or innocence, would "find the interrogation pressures overbearing." Joseph Grano, "Voluntariness, Free Will, and the Law of Confessions," 65 Va. L. Rev. 859, 906 (1979).

[43] *People v Manning,* 243 Mich App 615 (2000).

[44] Id., at 644.

and "*I don't want you to feel like you're forced to, okay, do anything*. Is that something you want to do?" This can hardly be viewed as coercive police conduct.[45]

[45] Defendant raises 1963 Mich. Const. Art. I, § 17 as providing "broader" protection than the Fifth Amendment. No such argument was made in the Court of Appeals. *Paramount Pictures Corp. v. Miskinis*, 418 Mich. 708 (1984) and *People v. Tanner*, 496 Mich. 199 (2014) are to the contrary, and this Court's MOAA order does not suggest that this argument is "up for grabs." Should the Court determine to revisit it in this or another case, one would expect that the Court's order would call for it.

RECEIVED by MSC 10/16/2025 3:41:25 PM

RECEIVED by MSC 10/16/2025 3:41:25 PM

Relief

Wherefore, the People request that this Court deny defendant's application for leave to appeal or affirm the decision of the Court of Appeals.

Respectfully submitted,

KYM L. WORTHY
Prosecuting Attorney
County of Wayne

JON P. WOJTALA
Chief, Research, Training, and Appeals

/S/
TIMOTHY A. BAUGHMAN
Special Assistant Prosecuting Attorney
5301 Russell St, Suite 200 (4th Floor)
Detroit, Michigan 48211
(313) 202-7113

CERTIIFICATION

I certify that the brief filed contains 4636 countable words.

/s/ TIMOTHY A. BAUGHMAN
Special Assistant Prosecuting Attorney