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IN THE SUPREME COURT OF THE STATE OF DELAWARE

BRANDON WYCHE, Defendant-Below, Appellant, v. STATE OF DELAWARE, Plaintiff-Below, Appellee.	)))))))))))	No. 253, 2014

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY

APPELLANT'S REPLY BRIEF

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I. THE TRIAL COURT COMMITTED REVERSIBLE ERROR WHEN IT PERMITTED THE STATE TO PRESENT TO THE JURY, UNDER 11 *DEL.C.* § 3507, BRATHWAITE'S OUT-OF-COURT STATEMENT THAT WAS INVOLUNTARY AND COERCED BY THE INTERROGATING DETECTIVE WHO FAILED TO READ HIM *MIRANDA* RIGHTS.

In its Answering Brief the State argues that "Wyche's reading of *Taylor* does not square with this Court's assessment of voluntariness in the context of a § 3507 statement." Ans. Br. at 12. The State contends that the *Miranda* warnings are "only one of the many factors considered by the Court." Ans. Br. at 11. Contrary to the State's position, "*Miranda's* procedural safeguards exist precisely because the voluntariness test is an inadequate barrier when custodial interrogation is at stake."[1]

The State misstates the holding in *Taylor* by arguing that "caselaw presumes a custodial interrogation to be inherently coercive". Ans. Br. at 14. Under *Taylor*, any statement made by a witness in police custody is presumed to be *involuntary* in the absence of certain procedural safeguards.[2] As this Court explained, "[f]undamental fairness and the orderly administration of justice require that custodial interrogations be treated

1 *Taylor v. State*, 23 A.3d 851, 856 (Del. 2010) (quoting *J.D.B. v. North Carolina*, 131 S.Ct. 2394, 2408 (2011)).
2 *Taylor*, 23 A.3d at 851 (emphasis added).

consistently."[3] Without adequate protective devices to dispel the compulsion inherent in custodial surroundings, no statement obtained from a defendant or a witness can truly be the product of his free choice.[4] As a result, both types of statements are inadmissible if the procedural safeguards of *Miranda* are not followed.[5] Thus, *Taylor* does not support the State's position and, in fact, supports Wyche's argument when examined closely.

Here, the record reflects that Braithwaite was in police custody and did not receive any *Miranda* warnings. His statement is therefore presumed to be involuntary. While this presumption can be overcome,[6] the State failed to provide sufficient evidence to overcome it. Instead, the State simply asserts that "there is no indication that Brathwaite's interview went beyond that presumptive baseline." Ans. Br. at 14. However, the State fails to recognize that his statement is not rendered involuntary merely because it exceeded some presumptive baseline. Brathwaite's statement is involuntary because *Miranda* warnings are "necessary to mitigate the inherently coercive pressure of a custodial interrogation."[7] This is especially true for statements made by a juvenile in police custody, as Delaware law demands "special

3 *Id*. at 855.
4 *Id*. at 856 (citing *Miranda v. Arizona*, 384 U.S. at 458, 86 S.Ct. 1602).
5 *Id*.
6 "If, for example, the State can show that the witness thought that the interrogator was only trying to scare him, and did not believe that he was being arrested, that would suffice." *Id*. at 854, FN. 16.
7 *Taylor*, 23 A.3d at 855.

scrutiny" of a juvenile's incriminating statements.[8] Without the benefit of *Miranda*'s procedural safeguards, Brathwaite's statement is involuntary and thus the trial court committed reversible error when it permitted the state to present it to the jury.

The State also suggests that "the totality of the circumstances test is eviscerated by a bright-line rule" that renders a § 3507 statement presumptively involuntary in the absence of *Miranda* warnings. Ans. Br. at 12. Perhaps sensing that it could be effective, the State mistakenly relies on the dissenting opinion in *Taylor* to sustain its position.[9] The fatal flaw in the State's argument is its failure to recognize that the majority opinion in *Taylor* expressly rejected this concern and with good reason. Relying on *Miranda* and *J.D.B.*, two prominent United States Supreme Court cases, this Court recognized that "*Miranda's* procedural safeguards exist precisely because the voluntariness test is an inadequate barrier when custodial interrogation is at stake."[10]

In *Miranda,* the Supreme Court stated that "[e]ven without employing brutality, the 'third degree' or [other] specific stratagems, ... custodial interrogation exacts a heavy toll on individual liberty and trades on the

8 *Haug v. State,* 406 A.2d 38, 43 (Del.1979).
9 The dissent believed that a bright line rule ran "contrary to this Court's important and reasoned policy of deferential review in section 3507 voluntariness cases." *Taylor,* 23 A.3d at 862.
10 *Taylor v. State*, 23 A.3d 851, 856 n. 19.

weakness of individuals."[11] The Court went on to explain that "the records do not evince overt physical coercion or patent psychological ploys. The fact remains that in none of these cases did the officers undertake to afford appropriate safeguards at the outset of the interrogation to insure that the statements were truly the product of free choice."[12] Because custodial interrogation "blurs the line between voluntary and involuntary statements"[13], the Court formulated "concrete constitutional guidelines for law enforcement agencies and courts to follow."[14] Those guidelines established that the admissibility of any statement given during custodial interrogation would depend on whether the police provided the suspect with *Miranda* warnings.

In *J.D.B.,* the High Court reiterated that "reliance on the traditional totality-of-the-circumstances test raise[s] a risk of overlooking an involuntary custodial confession."[15] In doing so, the majority *rejected the dissent's argument* that "the clarity of the custody analysis [would] be destroyed unless a 'one-size-fits-all reasonable-person test' applied."[16] Justice Sotomayor, writing for the majority, countered that "[i]n reality,

11 *Miranda,* 384 U.S. at 455.
12 *Id*. at 457.
13 *Dickerson v. U.S.,* 530 U.S. 428, 435 (2000).
14 *Miranda,* 384 U.S. at 442.
15 *J.D.B,* 131 S.Ct. at 2408 (quoting *Dickerson,* 530 U.S. at 442).
16 *Id*. at 2407.

however, ignoring a juvenile defendant's age will often make the inquiry more artificial . . . and thus only add confusion." And so, the Court held that age is a relevant factor in determining whether a suspect is "in custody" for *Miranda* purposes.

Similarly, requiring *Miranda* warnings for all custodial interrogations does not eviscerate the totality of the circumstance test. "The failure of police to administer *Miranda* warnings does not mean that the statements received have actually been coerced, but only that courts will presume the privilege against compulsory self-incrimination has not been intelligently exercised." [17] Moreover, the State is afforded the opportunity to overcome the presumption. This presumption therefore merely shifts the burden in favor of the defendant, while leaving the totality of the circumstance analysis intact. However, the State failed to overcome the presumption in the instant case.

Finally, the State argues that even if the Superior Court abused its discretion by admitting Brathwaite's statement, such error was harmless. Ans. Br. at 14-15. Here, the State had no physical evidence linking Wyche to the shooting. More importantly, in arguing at trial for the admission of Brathwaite's statement, the State admitted that Brathwaite was "a very

17 *Oregon v. Elstad*, 470 U.S. 298, 310 (1985) (internal citations omitted).

important witness" and amounted to "one-third of the State's eyewitnesses in this case". (A-17(a)). Now the State desperately tries to trivialize the importance of Brathwaite's statement. The State can't have it both ways.

When reviewing claims for harmless error, courts "must consider both the importance of the error and the strength of the other evidence presented at trial. An error may be important if, for example, it concerned a witness giving significant testimony...."[18] That was the situation here. Brathwaite told Detective Rogers that he saw Wyche get out of a car, approach Merrell, and pull out a gun. (A-44). During the interview, Brathwaite identified Wyche in a photographic lineup as the shooter. (A-44). Because the assailant's identity was an important factor at trial, Brathwaite's out-of-court statement could have decisively influenced the jury.

Moreover, Brathwaite's direct testimony failed to "capture the essence of the out-of-court statements' content."[19]. By the State's own admission, Brathwaite testified that he was either "unsure or had no memory of the statements he made to police and the statements he was able to remember making were mostly lies." Ans. Br. at 8. For these reasons, Brathwaite's out-of-court statement was critical to the State's case and it cannot be said

18 *Van Arsdall v. State,* 524 A.2d 3, 10 (Del.1987).
19 *Barnes v. State*, 858 A.2d 942, 946 (Del.2004).

that the statement was merely cumulative.[20] Thus, the statement played a significant role in Wyche's convictions and this Court must reverse his convictions

20 *See*, *Wilson v. State*, 950 A.2d 634, 640 (Del. 2008).

CONCLUSION

For the reasons and upon the authorities set forth herein, the Court should reverse the Defendant's convictions.

Respectfully submitted,

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