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Case Number 64,2015

IN THE SUPREME COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,	)	
	)	
Plaintiff-Below,	)	
Appellant,	)	No. 64, 2015
	)	
v.	)	On Appeal from the
	)	Superior Court of the
JERMAINE WRIGHT,	)	State of Delaware in and
	)	for New Castle County
Defendant-Below,	)	
Appellee.	)	

STATE'S REPLY BRIEF

STATE OF DELAWARE
DEPARTMENT OF JUSTICE

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I. SUPERIOR COURT ABUSED ITS DISCRETION BY SUPPRESSING WRIGHT'S CONFESSION ON THE BASIS OF DEFECTIVE *MIRANDA*[1] WARNINGS.

Wright argues that no court has ever ruled on the merits of his claim that his confession should be suppressed because he received defective *Miranda* warnings from Detective Mayfield. Wright is simply incorrect. This issue was first decided by the Superior Court in 1991, after a suppression hearing, where it found that Wright's interrogation began "with a recitation of the *Miranda* rights,"[2] which Wright "knowingly and intelligently waived."[3] Consequently, Superior Court is precluded from re-visiting the issue and in any case, the claim is meritless.

Law of the Case

Wright asserts this Court only "observed generally that 'the admissibility of Wright's confession ha[d] been challenged and upheld repeatedly.'"[4] Wright argues that because this Court did not use language specifically addressing Det. Mayfield's *Miranda* warnings, prior decisions by this Court and Superior Court have no preclusive effect now. Not so. In the 2013 decision reversing Superior Court's grant of Wright's fourth postconviction motion, this Court cited all of the

[1] *Miranda v. Arizona*, 384 U.S. 436 (1966).
[2] *See State v. Wright*, Del. Super., ID No. 91004136DI, Del Pesco, J., Letter Order at 1 (October 30, 1991) (Ex. A to Corr. Op. Brf.).
[3] *Id.* at 17.
[4] Ans. Brf. at 19.

prior decisions that dealt with challenges to Wright's confession,[5] and specifically precluded further consideration of Wright's confession.[6] But, Superior Court and Wright have ignored this Court's ruling. Wright seems to contend that he can repeatedly attack on his confession by arguing that this Court did not use specific enough language when it upheld his confession. He is wrong. To entertain such an argument invites endless attacks on the same issue. Prior decisions upholding Wright's confession are unmistakably clear. Wright has failed to establish a basis to argue that this Court was mistaken when it stated that the adequacy of Wright's *Miranda* warnings had been previously litigated.[7]

To the extent Wright suggests that the State waived the argument that Superior Court had previously made an implicit finding that the *Miranda* warnings were adequate,[8] he is mistaken. In a responsive pleading during the most recent postconviction proceedings, the State wrote:

> The adequacy of *Miranda* warnings constituted the starting points for the prior considerations of the voluntariness of Wright's confession. This Court and the Delaware Supreme Court could not have found that Wright had received *Miranda* warnings three times on

[5] *State v. Wright*, 67 A.3d 319, 323 (Del. 2013) (citing *Wright v. State*, 2000 WL 139974, at *1 (Del. Jan. 18, 2000)); *Wright v. State*, 633 A.2d 329, 334-35 (Del. 1993); *State v. Wright*, 1998 WL 734771, at *5-6 (Del. Super. Sept. 28, 1998); *State v. Wright*, 1992 WL 207255, at *3 (Del. Super. Aug. 6, 1992); *State v. Wright*, ID No. 91004136DI, at 16–17, 19–20.
[6] *State v. Wright*, 67 A.3d 319, 323 (Del. 2013).
[7] *See* Ans. Brf. at 22.
[8] Ans. Brf. at 22.

> January 30, 1991 if the courts had not found the warnings to be adequate.[9]

Therefore, Wright cannot show waiver.

Wright now argues that this Court should defer to the factual findings of the **trial court** that Det. Moser never gave *Miranda* warnings.[10] But the **trial court**, which denied Wright's suppression motion after a hearing, did find that Detective Moser gave Wright *Miranda* warnings.[11] Det. Moser's testimony at the September 30, 1991 suppression hearing was that he read the warnings to Wright off of the card, even though Det. Merrill advised Det. Moser that he had provided warnings to Wright. (A117-118). Det. Moser recited the *Miranda* warnings for Superior Court at that time from memory. (A118). After Wright's 1993 trial, this Court on Wright's direct appeal, and Superior Court on Wright's first postconviction motion, continued to find that Det. Moser provided Wright with *Miranda* warnings.[12]

It was the successor trial court, more than 20 years later that found that Det. Moser did not provide warnings.[13] Like the successor court, Wright has transformed Det. Moser's truncated trial testimony into a denial that he

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[9] *See State's Response to Request for Supplement Briefing*, dated 7/1/11, at 14-15. DI 415 (AR1-2).
[10] Ans. Brf. at 26.
[11] *Wright*, 633 A.2d at 332; *Wright*, 1992 WL 207255, at *1; *State v. Wright*, 1998 WL 734771, *3 (Del. Super. Sept. 29, 1998).
[12] *Wright*, 633 A.2d at 332; *Wright*, 1998 WL 734771, at *3.
[13] *State v. Wright*, 2012 WL 1400932, at * 41 (Del. Super. Jan. 3, 2012).

administered *Miranda* warnings. But, Det. Moser never said he failed to provide Wright with *Miranda* warnings, and to determine otherwise is unreasonable.[14]

As this Court stated in reversing Superior Court's grant of Wright's fourth motion for postconviction relief, "the Superior Court did not have any new evidence upon which to conclude that Wright's *Miranda* warnings were defective."[15] "***There was no basis for the Superior Court to reconsider the admissibility of Wright's confession.***"[16] Prior decisions by this Court on any adjudicated issue involving Wright's claims became the law of the case in all subsequent stages of his continuing criminal proceedings.[17] To the extent Wright asserts that the successor court had "knowledge" the original judge did not have, such as "the extent of detectives' knowledge of the case prior to the interrogation" or the opportunity to see "the detective invent facts out of thin air,"[18] these arguments are unpersuasive. In its October 30, 1991 decision on the motion to suppress, the trial court specifically found that Det. Moser did not feed Wright information.[19] Even the successor judge acknowledged that memories deteriorate over time, stating, "the court believes [Detective Moser] was honest in his efforts

[14] On direct appeal from Wright's 1992 convictions, this Court found that Wright waived his *Miranda* rights three times. *Wright*, 633 A.2d at 335.
[15] *Wright*, 67 A.3d at 323.
[16] *Id.*
[17] *See Brittingham v. State*, 705 A.2d 577, 579 (Del. 1998); *State v. Halko*, 188 A.2d. 100, 107-08 (Del. Super. 1962).
[18] Ans. Brf. at 24.
[19] *State v. Wright*, No. 91004136DI, at 19-20.

to recall the events of March 14, 1991. It is no criticism of him that time may have eroded his memory of those long-ago events."[20] Wright should not benefit from the failed recollection of the witnesses. The facts have not changed and the law of the case now precludes review.

In 1991, the State met its burden at Wright's first suppression hearing of proving that proper warnings were given. Wright did not challenge it. Wright's challenge today, over 17 years later, after memories have faded, is an unreasonable and belated attack – precisely what the law of the case is meant to preclude.[21] When a case involves a successor judge, as this case does, adherence to prior rulings becomes increasingly important because "[p]arties must not be entrapped by varying philosophies of different judges of the same Court in the case."[22] Only in extraordinary situations should a successor judge depart from the established law of the case.[23] Wright's case does not present an extraordinary situation. Absent evidence of clear error or an important change of circumstance, which this Court found did not exist, Superior Court's 1991 ruling is the law of the case that binds the successor judge.[24]

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[20] *Wright*, 2012 WL 1400932, at *41.
[21] "[T]he law of the case normally requires that matters previously ruled upon by the same court be put to rest." *Frank G.W. v. Carol M.W.*, 457 A.2d 715, 718 (Del. 1983); *see also Bailey v. State*, 521 A.2d 1069, 1093 (Del. 1987) ("[r]ulings made by the trial court and not challenged on appeal become the law of the case").
[22] *Id.* at 719.
[23] *Id.*
[24] *See Shah v. State*, 2011 WL 4435682, at *1 (Del. Sept. 23, 2011); *Bailey*, 521 A.2d at 1093.

Wright urges this Court to disregard the law of the case with misplaced reliance on *Hoskins v. State*.[25] In *Hoskins*, this Court preliminarily acknowledged that when Hoskins was on direct appeal, the Court found that the trial judge did not commit plain error by failing to *sua sponte* give an accomplice credibility instruction.[26] However, on Hoskins' related postconviction ineffective assistance of counsel claim, the Court held "[e]ven though the law of the case doctrine may guide elements of our analysis, it does not bar Hoskins from making an ineffective assistance of counsel claim, which is a separate issue from whether the trial judge plainly erred."[27] The Court's holding in *Hoskins* has no bearing on Wright's case because Hoskins considered two different claims: ineffective assistance of counsel, and the underlying substantive claim. Here, Wright's motion to suppress was granted by the successor judge after considering the adequacy of his *Miranda* warnings, an issue that had already been decided against him by this Court and Superior Court.

For the same reasons, the Superior Court's decision in *Jenkins v. State*[28] also does not assist Wright. In *Jenkins*, Superior Court determined that trial counsel was ineffective for failing to file a suppression motion based upon the fact that the

[25] 102 A.3d 724 (Del. 2014).
[26] *Id*. at 732.
[27] *Hoskins*, 102 A.3d at 729-30.
[28] 2010 WL 596505 (Del. Super. Feb. 18, 2010).

Miranda warnings omitted advising the defendant of his right to an attorney.[29] Wright makes much of the fact that defendant had previously argued on direct appeal that he did not receive *Miranda* warnings, and this Court stated that it had reviewed the videotape of the interview and it depicted the detective informing the defendant of his rights before asking any questions."[30] But *Jenkins* hinged on an ineffective assistance of counsel claim for failing to file a motion to suppress Jenkins' statement, not the underlying substantive claim. That is not the case here. Wright's original counsel filed two motions to suppress his statement and had two suppression hearings; counsel also filed a motion for postconviction relief attacking his confession. In each instance, the outcome was the same. Wright lost. Nearly two decades later, and after witnesses' memories were naturally failing, a new judge rewrote history and granted a suppression motion on the same substantive claim, which both this Court and the Superior Court had already decided against Wright. The law of the case, therefore, precludes the successor judge's departure from the original denials of Wright's like claims.

Det. Mayfield was not required to re-administer Miranda warnings

The State has consistently maintained that Wright was provided with three sets of *Miranda* warnings, and that Detective Mayfield's warnings "did not negate either the two prior warnings, or the balance of the warning that Detective

[29] *Id.* at *4-6.
[30] *Id.* at *1.

Mayfield provided." (B209). Having been mirandized by the police twice previously that evening, Det. Mayfield, under *Ledda v. State*,[31] was not required to give Wright *Miranda* warnings again.

In 2012, the State appealed Superior Court's grant of Wright's fourth postconviction motion and prevailed on the law of the case as to Wright's claim regarding the adequacy of his *Miranda* claim.[32] The State perceived no need to address the *Ledda* argument thereafter. The issue has arisen only because Superior Court has improperly revisited the *Miranda* claim, despite this Court's ruling. To the extent the Court finds that the State has waived this claim, the State argues that the successor court's decision that Det. Moser did not provide Wright with *Miranda* warnings was contrary to the trial court's ruling and based upon factual findings that were clearly erroneous,[33] thus constituting plain error.[34] The interest of justice requires this Court's consideration.[35]

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[31] 564 A.2d 1125 (Del. 1989).
[32] 67 A.3d at 323-24.
[33] To the extent that the issues on appeal implicate findings of fact, [this Court] conduct[s] a limited review of the trial judge's factual findings to determine "whether there was sufficient evidence to support the findings and whether those findings were clearly erroneous." *Jenkins v. State*, 970 A.2d 154, 157 (Del. 2009) (internal citation omitted).
[34] "Under the plain error standard of review, the error complained of must be so clearly prejudicial to substantial rights as to jeopardize the fairness and integrity of the trial process." *Wainwright v. State,* 504 A.2d 1096, 1100 (Del. 1986); *Turner v. State*, 5 A.3d 612, 615 (Del. 2010).
[35] "This Court may excuse a waiver, however, if it finds that the trial court committed plain error requiring review in the interests of justice." Del. Supr. Ct. R. 8; *Turner,* 5 A.3d at 615.

Wright's reliance on *United States v. Marc*[36] and *United States v. Hanton*[37] notwithstanding, the *Ledda* factors did not require Det. Mayfield to re-administer *Miranda*. In *Marc*, the District Court of Delaware acknowledged that in assessing the voluntariness of the defendants' *Miranda* statements, the question was whether the defendants' statements were "obtained by exploitation of the illegality of [their] arrest."[38] The defendants' illegal detentions, significant lapses between *Miranda* warnings, a change in location between the place where the last *Miranda* warnings were given and the place the statements were made, the fact that different officers gave the warnings and conducted the investigations and were interrupted during the interrogation, the lack of specific corroborating evidence as to waiver, and the escalating nature of the charges, accumulated to lead the court to suppress the statements.[39]

In *Hanton*, the court suppressed a defendant's statement finding that after a review of the totality of the circumstances, "[d]efendant's waiver of *Miranda* rights at the Somerset Hospital was not effective for the subsequent interview of the Defendant by Trooper Walker at the [] Police Barracks because of several intervening events and circumstances."[40] The court considered the change in location from hospital to police barracks, four-hour time lapse, the escalating

[36] 1997 WL 129324 (D. Del. Mar. 19, 1997).
[37] 418 F. Supp. 2d 757, 764 (W.D. Pa. 2006).
[38] *Marc*, 1997 WL 129324 at *8 (citing *Brown v. Illinois*, 422 U.S. 590, 600 (1975)).
[39] *Id.* at *8-9.
[40] *Hanton*, 418 F. Supp. 2d at 764.

nature of the charges, the defendant's limited experience with the criminal system, defendant's interview by a different officer than the one who mirandized him, and the variance between the defendant's statements to the officer and those at the hospital.[41]

None of the additional complicating factors in *Marc* and *Hanton* exist here. Here, Wright was not illegally detained nor moved from a location outside of the police station, and he did not give a substantially varying statement. In considering the five *Ledda* factors, Wright received *Miranda* warnings from Det. Moser and confessed to him approximately 5-6 hours later, while sitting in the same room. Approximately a half an hour later, Det. Mayfield, *with Det. Moser*, continued the interview, in a different room that accommodated the video equipment. Wright gave a substantially identical admission. Wright was not faced with a new interrogator in a new setting discussing a new topic. Re-administration of *Miranda* warnings, although given, was not required. Superior Court's contrary ruling was in legal error.

[41] *Id.*

Det. Mayfield's Miranda warnings were adequate.

Even if Det. Mayfield were required to re-administer warnings, the warnings he provided Wright were adequate.[42] Although Wright cites *Florida v. Powell,*[43] *Duckworth v Eagan*[44] and *United States v. Warren*[45] to support his argument, as the State explained in its opening brief, those cases do not assist him.[46] Like Det. Mayfield's warning to Wright, *Powell* held that warning a suspect that he has the right to talk to a lawyer before answering any questions, and that he could invoke at any time, satisfied *Miranda*.[47] Even though Det. Mayfield's warnings said "[If you] can't afford to hire [a lawyer], if the state feels that you're diligent and needs one, they'll appoint one for you," he also told Wright he had the right to remain silent, that anything he said could used against him in court and that he could have a lawyer present with him "right now" or "at any time." **(**A92). And like *Duckworth,* where the Supreme Court found that language that an attorney would be provided "if and when you go to court" was sufficient, Det. Mayfield's warning "touched all of the bases required by *Miranda*."[48] The Third Circuit's decision in *United States v. Warren*, holding that the lack of an express reference to the right

[42] *See Florida v. Powell,* 559 U.S. 50, 60 (2010) (quoting *Duckworth v. Eagan,* 492 U.S. 195, 203 (1989) (*Miranda* is satisfied if "the warnings reasonably 'conve[y] to [a suspect] his rights as required by *Miranda.*'").
[43] 559 U.S. 50 (2010).
[44] 492 U.S. 195 (1989).
[45] 642 F.3d 182 (3d Cir. 2011).
[46] *See* Op. Brf. at 29-35.
[47] *Powell,* 559 U.S. at 53.
[48] *Duckworth*, 492 U.S. at 203.

to counsel during interrogation did not undermine the validity of a defendant's *Miranda* warning, also supports the adequacy of Det. Mayfield's warnings to Wright.[49]

Wright agrees with Superior Court's most recent ruling that Det. Mayfield's warnings placed a barrier to his access to counsel. Wright and Superior Court are incorrect. Neither *State v. Luckett*[50] nor *United States v. Connell*[51] controls. Considering Det. Mayfield's *Miranda* warning as a whole, as the Supreme Court did in *Powell* and *Duckworth*, Det. Mayfield's warnings were adequate.

Wright waived the associated voluntariness claim.

Wright disputes that he has waived any claim as to the voluntariness of his waiver of *Miranda*. He is wrong. In a letter to the court, after the December 16, 2014, hearing, Wright expressly requested that the court issue its decision without addressing the voluntariness claim, stating "the defense would withdraw its previous request that the opinion deal with both issues at the same time and would request that the Court's order with respect to the adequacy of the *Miranda* warnings be entered at this time." *See* A484. Counsel did not ask for a deferment, as Wright here suggests, but specifically *withdrew* its request for a decision.

[49] 642 F.3d at 186.
[50] 993 A.2d 25 (Md. 2010).
[51] 869 F.2d 1349 (9th Cir. 1989).

Wright's voluntariness claim is therefore waived.[52] In any case, as previously decided, under the totality of the circumstances, Wright knowingly, intelligently and voluntarily waived his Fifth Amendment rights and his videotaped confession is admissible against him at his re-trial.[53]

[52] Del. Supr. Ct. R. 8.
[53] *Hubbard v. State*, 16 A.3d 912, 917 (Del. 2011); *Turner v. State*, 957 A.2d 565, 570, 570 n.1 (Del. 2008) (collecting cases).

II. A DIFFERENT TRIAL JUDGE SHOULD BE ASSIGNED TO WRIGHT'S NEW TRIAL.

Wright argues that this Court lacks jurisdiction to review the State's appeal of Superior Court's denial of the State's motion to recuse. Wright also argues that because the State failed to include its intent to appeal the denial of the motion to recuse in the certification for appeal, it is prohibited from raising it.[54]

This Court can consider whether it is appropriate to assign a new Superior Court judge to this matter regardless of the appellate posture of the issue. Delaware Supreme Court Rule 82(b) recognizes that when a when a capital case is reversed and remanded to the Superior Court, the President Judge shall assign a different judge to preside over the case if the judge whose decision was reversed on appeal is the same judge who presided over the bench trial or the penalty hearing that resulted in the imposition of the death sentence.[55] Here, the current trial judge granted Wright postconviction relief on his fourth Rule 61 motion. This Court reversed and remanded for reinstatement of the convictions.[56] After reinstatement of Wright's convictions, Wright appealed and this Court reversed and remanded for a new trial.[57] On remand, the current trial judge granted Wright's motion to suppress his statement based upon a *Miranda* violation. That

[54] Ans. Brf. at 41-42.
[55] Del. Supr. Ct. R. 82(b).
[56] *Wright*, 67 A.3d 319, 235 (Del. 2013).
[57] *Wright v. State*, 91 A.3d 972, 994 (Del. 2014).

judge's ruling forms the main basis for this appeal. Because of the history of this case, Rule 82(b) supports assigning another judge to this case.

Wright purposefully overlooks the judge's partiality. The record is clear that the current trial judge has a vested interest in the outcome of this case and he has eschewed the established facts in the record and created his own. The current trial judge even unsuccessfully pressed the State in an uncomfortable exchange to agree that this Court was mistaken in its prior ruling. A323-39. The State maintained that this Court's holding that the litigation of Wright's understanding of his *Miranda* rights included the adequacy of the warnings themselves. A337. The current trial judge ultimately agreed with the State that in light of this Court's holding, he should not be allowing further litigation over the adequacy of Wright's *Miranda* warnings. A337-39. Regardless, the current trial judge did just that.

On December 16, 2014, the current trial judge issued its Opinion denying the State's Motion for Recusal.[58] The current trial judge's denial was notable for his re-creation of the record and his unnecessary and hypercritical attack of the State. The current trial judge thereafter held a status hearing wherein he stated he would soon be issuing an order suppressing Wright's confession and he hoped to issue the formal opinion by January 3, 2015 because "the 3rd of January is a momentous date in this particular case." This comment, which Wright ignores,

[58] *State v. Wright*, 2014 WL 7465795 (Del. Super. Dec. 16, 2014).

was patently improper and exhibited undeniable favoritism. The current trial judge's substantive and biased rulings thus recommend assignment of a new trial judge.

CONCLUSION

The judgment of the Superior Court suppressing Wright's confession should be reversed. The matter should be remanded and a different Superior Court judge assigned to preside over future proceedings.

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CERTIFICATION OF SERVICE/MAILING

The undersigned certifies that on June 19, 2015, she caused the attached *Reply Brief* to be electronically delivered through File and Serve Xpress to the following:

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