

SUPREME COURT OF COLORADO

People v. Nguyen

406 P.3d 836 (Colo. 2017) · Decided October 2, 2017

SUMMARY

The Colorado Supreme Court reversed an order suppressing statements made by Hung Van Nguyen after Miranda rights were translated into Vietnamese by a police chaplain. The court held that, viewed in context and under the totality of the circumstances, the translation reasonably conveyed Nguyen’s rights to remain silent, to have statements used against him in court, and to appointed counsel before questioning.

OPINION

EID, J.

JUSTICE EID delivered the Opinion of the Court. ¶ 1 Defendant Hung Van Nguyen, who only speaks Vietnamese, waived his rights as provided by *Miranda v. Arizona*, 384 U.S. 436, 444, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966), after they were translated to him by a chaplain for the Denver Police Department.

The trial court ruled that the defendant’s waiver was voluntary, but not knowing and intelligent, because the translation could be considered “confusing.” The court therefore suppressed Nguyen’s statements. ¶ 2 The People brought this interlocutory appeal, and we now reverse the trial court’s suppression order.

The question here is whether the translation “reasonably convey [ed]” to Nguyen his rights under *Miranda*. See *People v. Mejia-Mendoza*, 965 P.2d 777, 781 (Colo. 1998). Primarily at issue is whether the translation, which stated that if Nguyen waived his right to be silent, “[a]ll you say will and may be used as evidence in court,” reasonably conveyed the *Miranda* warning that anything he said could be used against him in court.

We conclude that it did. By informing him that his statements could be used in court, the translation included the concept that the statements could be used against him (as well as for him) in court. The fact that the warning may have left open the possibility that Nguyen’s statements could be used in his favor did not countermand the fact that they could be used against him.

Secondarily, we address whether the translation reasonably conveyed to Nguyen the warning, as required by *Miranda*, that if he could not afford an attorney one would be appointed for him prior to questioning. We conclude that it did.;Accordingly, we reverse the trial court’s suppression order and remand the case for further proceedings.

I. ¶ 3 The following facts come from the proceedings before the trial court and appear to be undisputed. A witness told police that “Hung” had stabbed the victim. Riding in a patrol car, the witness directed officers to a home where he believed Hung was located.

The witness gave officers a phone number he said belonged to Hung, which an officer called. Nguyen came out of the home, and the witness positively identified him as Hung. Nguyen was handcuffed, transported to the police station, and interrogated. ¶ 4 Nguyen spoke only Vietnamese.

The questioning officer, Detective Vacca, called in Father Dang, a precinct chaplain who speaks Vietnamese, to act as an interpreter. Father Dang was not a certified Vietnamese interpreter. Detective Vacca read Nguyen his Miranda rights one by one, and Father Dang followed with a translation.

The exchange, in relevant part, occurred as follows: DETECTIVE VACCA: [S]o you have the right to remain silent. FATHER DANG: Uh... ' you have the right to be silent... silent, alright? DETECTIVE VACCA: You understand that? *838 FATHER DANG: Understand? HUNG NGUYEN: Yes. [[Image here]] DETECTIVE VACCA: Anything you say -can be- used as evidence against you in court.

You understand that? - FATHER DANG: All you say will and may be used as evidence in court, understand? [[Image here]] HUNG NGUYEN: Yeah. DETECTIVE VACCA: Thank you '... Uh... you have the right to talk to an attorney... [[Image here]] DETECTIVE VACCA:...

The right to talk to a lawyer before questioning and have him present during questioning, you understand that? FATHER DANG: Obviously you have right to talk to a lawyer who represents you before you answer the questions or to let that person represent you before the questions... during questioning, understand? HUNG NGUYEN: Yes. FATHER DANG: Yes. DETECTIVE VACCA: If you cannot afford a lawyer one will be appointed for you without cost before questioning.

You understand that? FATHER DANG: And if you do not have money to hire an attorney the court will instruct you, will appoint, a person to you at no cost to represent you before asking questions, understand? HUNG NGUYEN: Yes. [[Image here]] DETECTIVE VACCA: Ok, so I just want to be clear, you understand your Miranda rights and you don't have to talk to me, you can talk to a lawyer instead.

FATHER DANG: Because we want you to understand that you have the right to hire an attorney to represent you and you do not need to answer us right now, understand? HUNG NGUYEN: Understand!.] Nguyen then spoke with Detective Vacca about the stabbing incident. ¶ 6 Nguyen filed a motion to suppress his statements, arguing that Father Dang had omitted and mistranslated crucial words, rendering his Miranda waiver ineffective. In particular, Nguyen focused on the fact that Father Dang translated the second Miranda warning as, “[a]ll you say will” and may be used

as evidence in court, understand-,” omitting the words “against you.”¹ The trial court stated that it “[did not] think the fine points of law as to whether something could be used against him or whether that would be in the average defendant’s head in this case” was dispositive of the case, but, rather that the translation “could be considered confusing.” It found that Nguyen’s statements were “voluntary,” but concluded that they were not necessarily “knowing or intelligent.” The trial court thus granted Nguyen’s motion to suppress the statements. ¶ 6 The People filed this interlocutory appeal pursuant to section 16-12-102(2), C.R.S.

(2017) and C.A.R. 4.1, asserting that the Miranda waiver was knowing and intelligent. We agree with the People, and we therefore reverse the trial court’s suppression order and remand for further proceedings. II. ¶ 7 Given the inherently coercive nature of police custodial interrogation, the United States Supreme Court has set forth specific safeguards in order to protect the privilege against self-incrimination.

Miranda, 384 U.S. at 444, 86 S.Ct. 1602. In particular, officers must inform a suspect that he has a right to remain silent; that if he waives his right to that silence anything he says may be used against him in a court of law; that he has the right to have an attorney present; and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so wishes.

Id. at 479, 86 S.Ct. 1602. In the absence of a proper advisement, a defendant’s statements are not admissible *839 in the prosecution’s case in chief. *Sanchez v. People*, 2014 CO 56, ¶ 11, 329 P.3d 253, 257. ¶ 8 A valid waiver of one’s Miranda rights must be voluntary, knowing, and intelligent. *Miranda*, 384 U.S. at 444, 86 S.Ct. 1602.

In this case, the trial court found that the waiver was voluntary, but not knowing and intelligent.² The trial court, echoed here by Nguyen, concluded that because the translation failed to adequately convey to Nguyen his Miranda rights, his waiver could not be knowing and intelligent.

The question before us, then, is whether the translation “reasonably convey[ed]” to Nguyen his Miranda rights. See *Mejia-Mendoza*, 965 P.2d at 781 (concluding that the translator’s statements “failed to reasonably convey to [the defendant] his rights as required by Miranda”); *People v. Aguilar-Ramos*, 86 P.3d 397, 402 (Colo. 2004) (concluding that “[W]here, as here, the police fail to accurately communicate to the defendant his basic rights under Miranda, and the defendant is therefore unable to understand those rights, any resulting waiver must be deemed constitutionally insufficient”).

Looking at the totality of the circumstances, we review this legal question de novo. *Aguilar-Ramos*, 86 P.3d at 400-01. ¶ 9 Specifically, Nguyen argues that he was not informed (1) of the fact that his statements could be used against him in a court of law, or (2) that if he could not afford an attorney one would be appointed for him prior to questioning. We address each

argument in turn, ¶10 During questioning; Detective Vacca read-the Miranda warnings,- which Father Dang then translated.

As relevant here, Detective Vacca stated, “Anything -you say can be used as evidence against you in court. You understand that?” Father Dang translated this warning as, “All you say will and may be used as evidence in court, understand?” Later in the interview, Detective Vacca repeated the question, “[D]o -you understand that if you talk to me; that anything you say I will use in court against you?” Father Dang translated this as “Hung knows that today what Hung talks to the police will and may be use[d] in court, understand?,”- Therefore, the translations stated that Nguyen’s statements could be used as evidence in court, but they did not include the words “against you.” ¶ 11 Nguyen argues that by omitting the words “against you,” the advisements were misleading, because statements made during interrogation are generally not used in the defendant’s favor at trial.

We disagree. ¶ 12 By informing Nguyen that his statements could be used in court, the translations included- the concept -that the statements could be used against him (as well as for him) in court. In other words, the advisements did in fact inform- Nguyen that his statements could be used against him.. Importantly, then, the problem presented in this case is potentially one of overinclusion (that is, that Nguyen’s statements would be used both for and against him), not underinclusion.

We do not believe that leaving open the possibility that statements could be used in Nguyen’s favor somehow nullified the concept that they would be used against him. ¶ 13 Moreover, it seems unlikely that a defendant in Nguyen’s situation would understand that his responses to the detective’s questioning would be used “for him” in court in any event. Indeed, Nguyen was properly warned that he had a right to remain silent.

The very reason a defendant is informed that he has the right to remain silent is that any decision to talk to police can have serious consequences. See *Miranda*, 384 U.S. at 468-69, 86 S.Ct. 1602. A defendant in Nguyen’s position would reasonably understand that if he gave statements that implicated him in the stabbing, those statements would be used in court against him, not for him. ' ¶ 14 Our recent decision in *Carter v. People*, 2017 CO 59M, ¶ 14, 398 P.3d 124, 127-28, is instructive.

There, the-defendant was advised, “You have the right to have an attorney.” *Id.*, 398 P.3d at 128. The defendant *840 argued that *Miranda* required that he be advised more specifically that his right to an attorney would apply both before and during any interrogation by the police. *Id.* at ¶ 8, 398 P.3d at 126.

We rejected this argument, and instead observed that the lack of a temporal limitation in the advisement permitted the inference that the right to an attorney could be exercised both before and

during questioning. *Id.* at ¶ 14, 398 P.3d at 127-28.

We then concluded that, given the overall context of the advisement, “[I]t would be highly counterintuitive for a reasonable suspect in a custodial setting, who has just been informed that the police cannot talk to him until after they advise him of his rights to remain silent and to have an attorney, to understand that an interrogation may then proceed without permitting him to exercise either of those rights.” *Id.*, 398 P.3d at 128.

Similarly here, having just been informed of his right to remain silent and that “[a]ll you say will and may be used as evidence in court,” a reasonable suspect would not conclude that his statements to the police would be used in his favor. ¶ 15 Finally, this case is plainly distinguishable from *Mejia-Mendoza*, -on which *Nguyen* relies. There, we found that the defendant’s waiver was not knowing and intelligent where the interpreter erroneously told the defendant that “[n]othing is being used against you.” *Mejia-Mendoza*, 965 P.2d at 781.

This statement, of course, is entirely inaccurate; it suggests that, contrary to the purpose of the *Miranda* warning, no statements made would have any consequences. Here, by contrast, the translations at issue did warn *Nguyen* that his statements would have consequences in court. ¶ 16 As we have noted in the past, “no translation is perfect.” *Id.* at 782. Indeed, although the *Miranda* warnings are an absolute prerequisite, they need not be conveyed through any particular “*talismanic incantation*.” *Sanchez*, ¶ 12, 329 P.3d at 257.

Instead, looking at the totality of circumstances surrounding the advisement, the question in this case is whether *Nguyen* was advised that his statements regarding his role, if any, in the stabbing could be used against him in court.

We conclude that this concept was properly conveyed to, and thus understood by, *Nguyen*. ¶ 17 *Nguyen* also claims he was not properly informed that if he could not afford an attorney, one would be appointed for him prior to questioning.

First, he focuses on that portion of the translation stating, “[I]f you do not have money to hire an attorney the court will instruct you, will appoint a person to you at no cost to represent you before asking questions, understand?” *Nguyen* argues that the use of the term “instruct” was misleading.

However, Father *Dang* corrected himself soon after using that term, stating that the court “will appoint a person to you at no cost to represent you.” (Emphasis added.) We therefore conclude the use of the word “instruct” had no bearing on whether the right to an appointed attorney was properly conveyed. ¶ 18 Along these same lines, *Nguyen* takes issue with the translated statement that the court would appoint “a person,” rather than a lawyer.

Yet the statement referred to “a person... to represent you” — in other words, a lawyer. And in the phrase immediately preceding, the translation referred to “an attorney”; therefore, the word

“person” is naturally read to refer back to “an attorney.” Again, taking the advisement in context, we conclude that the right to an appointed attorney was reasonably conveyed. ¶ 19 Finally, Nguyen suggests that he was not adequately informed of the timing of the appointment.

He asserts that while he was informed that the court would “appoint a person to you at no cost to represent you before asking questions” (emphasis added), this phrasing could leave the impression that the attorney would be appointed prior to questioning by the court at trial.

However, no such impression was possible, given the translator’s follow-up: “Because we want you to understand that you have the right to hire an attorney to represent you and you do not need to answer us right now, understand?”³ *841 In sum, we conclude that Nguyen was properly informed and understood that if he could not afford an attorney, one would be appointed -for him prior to questioning. ¶ 20 The trial court in this case stated that it was not basing its suppression order on the “fine points of law as to whether something could be used against him or whether that would be in the average defendant’s head in this case.” Instead, citing Mejia-Mendoza, it concluded that “the translation that I read, it could be considered confusing.” In Mejia-Mendoza, however, we found the advisement to be “misleading and confusing” because the translation “failed to reasonably convey to [the defendant] his rights as required by Miranda.” 965 P.2d at 781.

As noted above, in that case, the interpreter erroneously told the defendant that nothing the defendant said would be used against him. *Id.* In addition, *inter alia*, the interpreter erroneously told the defendant that if the defendant said something he would be released, and generally stepped out of the role of interpreter by volunteering, rather than translating, statements.

Id. Here, by contrast, we conclude that the translation did adequately convey to Nguyen his Miranda rights. Accordingly, we reverse the trial court’s suppression order. *m.* ¶ 21 For the reasons stated above, we reverse the trial court’s order suppressing Nguyen’s statements and remand the case for further proceedings. JUSTICE MÁRQUEZ dissents, and JUSTICE HOOD and JUSTICE GABRIEL join in the dissent..

Later in the interview, Detective Vacea again asked Nguyen, “[D]o you understand that if you talk to me that anything- you say I will use in court against you?” Father Dang translated this as, “Knowing that Hung knows’ that today what Hung talks to the police will and may be use[d] in court, understand?” Again, the words “against you” were omitted.. Nguyen also argues before this court that his waiver was not voluntary.

However, the trial court held that the waiver was voluntary, and Nguyen has no right of interlocutory appeal to challenge -that ruling. See § 16-12-102(2); C.A.R. 4.1. We therefore do not consider his arguments regarding voluntariness. See Mejia-Mendoza, 965 P.2d at 780 n.3

(declining to address the defendant's arguments regarding voluntariness, because they were not properly raised on interlocutory review)..

Nguyen also argues that the use of the word "hire" here suggests that Nguyen would have to pay for an attorney. We again disagree with this reading of the advisement. As noted above, Nguyen was informed before this, "[I]f you do not have money to hire an attorney the court will instruct you, will appoint a person to you at no cost to represent you before asking questions, understand?" (Emphasis added.)